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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

DIANNE CASTANO, ERNEST PERRY and GEORGE SOLOMON, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED vs. THE AMERICAN TOBACCO COMPANY, INC.; AMERICAN BRANDS, INC.; R. J. REYNOLDS TOBACCO COMPANY; RJR NABISCO, INC.; BROWN & WILLIAMSON TOBACCO CORPORATION; BATUS, INC., BATUS HOLDINGS, INC.; PHILIP MORRIS INC.; PHILIP MORRIS COMPANIES, INC.; LIGGETT & MYERS, INC.; LIGGETT GROUP, LTD.; LORILLARD TOBACCO COMPANY, INC.; LORILLARD INC.; LOWES CORPORATION; UNITED STATES TOBACCO COMPANY; UST, INC.; AND TOBACCO INSTITUTE, INC.	Civil Action No. 94-1044 C/W 94-3000 Section: "C" (5)

July 17, 1996

Richmond, Virginia

VOLUME II

The deposition of RONALD A. TAMOL, SR., taken at the instance of the plaintiffs, before Carol Hill, a Notary Public for the State of Virginia at Large, beginning at 9:00 a.m., at The Jefferson Hotel, Franklin and Adams Streets, Richmond, Virginia; said deposition taken pursuant to the Federal Rules of Civil Procedure.

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(Deposition continued from July 12, 1996.)

RONALD A. TAMOL, SR., called by the plaintiffs, being previously duly sworn, testified further as follows:

EXAMINATION

BY MR. RUSS HERMAN:

Q Sir, my name is Russ Herman. This is a continuation of your deposition. Again, if there is some question that I ask that doesn't make sense, I garble, stop me, and I'll do the best I can to ask a question that can be answered. Okay?

A Okay.

Q You understand that you're still under oath?

A Yes, I do.

Q Just as if you were in a court of law; correct?

A Yes.

Q You're represented by counsel, Mr. Mike Allen. Should he object or other lawyers object to some question, don't answer a question until they have stated the objection and given you an opportunity to direct you as to whether it ought to be answered or not. Fair enough?

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A Okay.

Q Mr. Tamol, I misstated something to you during the first day of your deposition. As you recall, we looked at RAT Exhibit Number 7, which was a videotape. The video tape that we looked at, it had two segments about the F.A.C.T., F.-A.-C.-T. development or project, and then it was followed by your golfing lesson or videotape of your golfing. And I indicated that the remainder of the tape was, I thought, a woman golfing.

You remarked that you thought that those were individual tapes, and there was another tape. I left the impression that there was nothing else on that tape, which was wrong.

I went back and I viewed it in my office when I got back to New Orleans because I was looking for an additional F.A.C.T. or presentation. It's on Exhibit 7.

So for completeness of the record and because, as an officer of the court, we're not supposed to mislead the record or witnesses, the first thing we're going to do this morning is to clear that up and play for you the remainder of that video tape.

It starts with -- The remainder of Exhibit 7 starts with a very small segment of a female having

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a golf lesson or being videotaped.

It then moves into a partial presentation made by, presumably, a Philip Morris employee who is congratulating you on videotape for something that you have done in connection with the 25th -- either your retirement or a 25th anniversary.

Then there is a short blank, and then it moves on to a different presentation of the F.A.C.T. or development, marketing type film, explanation type film. That's the first thing I would like to do is correct the record.

Again, I will ask the court reporter, to the extent it's possible, to take the oral or verbal material on the videotape down as we play the videotape.

If at some point, Mr. Tamol, you wish to make a comment or have some further identification, if you will let Mr. Allen know or just hold your hand up, we'll stop the tape and let you confer with Mr. Allen before it goes on.

(Playing of videotape.)

THE NARRATOR: The modern world where every problem is solved, another takes its place. We

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sealed up our homes to meet the energy crisis, only to find a new problem: Indoor air pollution, pollen, fungi, dust, spores, smoke and animal damage. Once these irritants get into our homes, they are trapped.

MR. RUSS HERMAN: Stop it at this point. If -- This portion of this videotape, Mr. Tamol, I believe from watching it, is a promotional film not made by Philip Morris.

After we play this segment, I'm going to stop it and just ask you a question as to what you recall this segment of the videotape being about.

THE WITNESS: All right.

(Playing of videotape.)

THE NARRATOR: Allergy patients suffer the most. Years ago electronic air cleaners were developed to improve air quality. But they are expensive, require modification of the heating and air-conditioning system, are difficult to clean, need additional maintenance, and are subject to breakdown.

Electronic air cleaners have another

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drawback. They create their own air pollution in the form of ozone. New technology has enabled Newtron to introduce a more natural answer to the problem of indoor air pollution: The Newtron electrostatic air cleaner.

Newtron has patented a unique arrangement of space age materials that will remove up to 100 percent of the pollen and 94 percent of the remaining airborne irritants from the home environment.

The easy-to-clean Newtron electrostatic air cleaner is convenient to install and maintain. It never produces ozone, and it costs about half as much as an electronic air cleaner.

We're all familiar with static electricity in one form or another. If you rub an acrylic rod, the friction gives the rod a strong positive static charge. It will then attract particles with a negative charge.

The Newtron electrostatic air cleaner uses the forced air from the heating and air-conditioning system to create friction across its seven layers of positive and negative static prone material. This creates a powerful electrostatic field that attracts and holds

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airborne particulates naturally.

Airborne particulates, which are normally positive, receive a negative charge as they pass through the two-layered polypropylene intake screens.

When the particulates reach the collector area, two rows of acrylic rods and the polyurethane pads attract and hold the particulates as the air passes through freely.

The two-layered polypropylene exit screen with its negative charge repels any particulates trying to escape and has a tendency to force them back into the collector area.

However, any particles that do pass through receive a negative charge, causing them to settle out of the air quickly.

The Newtron designed spaces that patented static prone material to assure that the maximum electrostatic charge will be maintained.

The construction of the Newtron air cleaner is critical to its effectiveness. This means that over 60 components must be fabricated and then assembled by hand to exacting specifications.

The Newtron air cleaner is easy to clean.

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Water breaks the static charge, and the particles float away. Water does not affect the material in the Newtron air cleaner.

The Newtron air cleaner is so well made, it is the only air cleaning system to carry a lifetime guaranty.

The Newtron people were convinced that they had found an air cleaning system that cleaned better than the electronic systems at less cost.

How could they convince the medical community as well as the heating and air-conditioning industry? They wanted conclusive answers.

So they subjected their air cleaning system to tests that no other manufacturer of air cleaning equipment has done. First, they asked hundreds of physicians who specialize in allergy treatment to try the Newtron air cleaner and give an evaluation.

90 percent of the evaluations indicated a noticeable reduction in irritants. Here are some of the allergists' comments.

"It performs very effectively. I have recommended it to several of my patients." Dr. Stanford Massie, Richmond, Virginia.

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"The Newtron represents a major breakthrough in air cleaning efficiency. We highly recommend it." Dr. M. Eric Gershwin, professor of medicine and chief of the division of rheumatology allergy at the School of Medicine of the University of California at Davis.

But I think Dr. Van Gasse from Ann Harbor, Michigan, sums it up best when he wrote, "I feel it has a significant role in the total management of the allergy patient."

Lately, Newtron has been recommended by name in medical books and journals. In the Journal of Respiratory Diseases, as we read, "On-line electronic precipitators are less efficient, produce ozone and require excessive maintenance. A fiberglass filter is useless and should be replaced with a filter that produces an electrostatic charge. I recommend the Newtron filter." Dr. John Selner, professor of pediatrics at the University of Colorado Health Science Center, Denver, Colorado.

In the book "Conquering Your Child's Allergies," Dr. Gershwin discusses different air filtering systems and then singles out Newtron

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with his only recommendation.

What about the heating and air-conditioning contractors? They are the ones that get the complaint if air cleaning equipment doesn't work.

When a group of contractors across the country tried Newtron in their homes, 9 out of 10 said it was worth the money or a good value.

Michael Wright of Redmond, Washington, said "It is the best filter system I have ever used."

Jim Lato of Atlanta, Georgia, said, "It is a quality product that delivers what it says it will."

So contractors like it, and the personal evaluations by the allergists overwhelmingly upheld the convictions of the Newtron people.

But personal evaluations are subjective. Could the Newtron air filter stand up to quantified objective scientific testing?

To answer this question, the Newtron Products Company hired an independent research facility. The researchers decided to perform the tests in the homes of allergy patients under everyday living conditions.

They used an Anderson 6 stage sampler,

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which measures total spore density, and a continuous roto rod, which measures pollen density. They tested the home to identify and count the specific pollen and spores present. Then they installed a Newtron electrostatic air cleaner.

At regular intervals over the next seven days, they continued to take samples and measure the results.

The Newtron electrostatic air cleaner had removed 100 percent of the pollen, 94 percent of the spores, and 87 percent of the dust in just a matter of days.

The Newtron's air cleaner striking performance so impressed the researchers that they authorized Newtron to release the following statement to the American Association for Clinical Immunology and Allergy and to the International Congress of Allergology and Clinical Immunology.

Ongoing research projects confirm that the Newtron electrostatic air cleaner causes a significant decrease in airborne pollen and spores.

With this kind of scientific professional

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and industry support, it is no wonder that Newtron backs their air cleaner with a 30-day money-back customer satisfaction guaranty.

You know what? 99.6 percent of their customers like what they get.

So there it is. Clean air, allergy relief, easy installation, one-half the cost of electronic air cleaners, easy to clean, no ozone, no energy consumption, 30-day satisfaction guarantee, lifetime replacement guarantee, proven effective by independent research in actual living environments.

The Newtron electrostatic air cleaner, the ultimate answer to indoor air pollution.

(End of playing of videotape.)

BY MR. RUSS HERMAN:

Q So the portion of the videotape on RAT-7 that we just viewed relating to the Newtron electrostatic air cleaner, is that a Philip Morris product?

A I don't know. I can't comment to that. My comment is, I don't remember seeing that. Again, I don't remember seeing that.

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Q You don't recall it at all?

A Not at all, no.

MR. RUSS HERMAN: Thank you. Let's continue with RAT-7, the videotape.

(Playing of the videotape.)

THE NARRATOR: Now, live from Houston. This is Channel 2 news today.

If you combine stale air with a heavy concentration of pollen, it is bad news. Here is our medical reporter Christy Myers.

MS. MYERS: This air filter has saved Betty Avery money, medicine, and misery. Air pollution causing her regular allergies usually keeps Betty at the doctor's office.

MS. AVERY: I was making visits to Dr. Percy about every three to four months before we had this filter.

DR. PERCY: People with chronic respiratory disease and elderly people with cardiopulmonary problems who have this choking, gasping at night have trouble breathing because of the dirt in the air.

It's all around us. Every time we have an

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air pollution warning such as we are having today, it goes into your house and gets outside and it's inside and you can't stop it, unless you have this technology. But this works.

MS. MYERS: Dr. Percy says, "The filter uses static electricity to trap pollens and pollutants like a magnet."

DR. PERCY: It's ready to remove 100 percent of pollen from the air in your home, to remove 95 percent of the mold spores. It removes approximately 95 to 98 percent of the particulates, smog out of the air, the big cloud that covers our community.

MS. MYERS: The filters are recommended by national and international societies of allergy specialists.

MS. AVERY: I would recommend it highly, I really would.

MS. MYERS: Christy Myers, Channel 2 news.

(End of playing of videotape.)

BY MR. RUSS HERMAN:

Q Sir, the videotape of a KPRC Houston television station contained on RAT-7, have you ever

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seen that before?

A No, I haven't.

MR. RUSS HERMAN: Let's continue with RAT-7.

(Playing of videotape.)

MR. LEPHARDT: Let's try it again. Ron, I'm truly sorry I couldn't be there for your special day to participate in your retirement celebration. Instead, I'm learning about diversity of work.

After working with you and JC for the last several years, I figure I need this training about as much as a five-year-old duck needs swimming lessons. But enough of regrets.

Since we became proficient in video technology while we were working together, it seemed that the least I could do would be try to record some comments for your special day.

Just so you would be able to recognize me, we decided, JC and I, we would do this in the F.A.C.T. room. As you can see, the room is working absolutely perfectly, just as you designed it.

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But to be serious for a moment, this particular room and the technology it represents could not have been accomplished without your efforts. We appreciate your willingness to listen to the concept ideas, be candid with us, to use your engineering background and proficiency to try and communicate the significance of the concept of other engineers and also your tenacity in locating the materials and the approaches that would be used to actually bring the concept to practice.

It was truly a case of how innovation actually works. We greatly appreciate you for it.

I also appreciate the sense of dedication and teamwork which you taught me during the course of the program.

Although the Benedum Center lounge and the fourth floor conference room are somewhat permanent reminders of your accomplishments, we thought you deserved something a little closer to home to be able to remember this accomplishment.

And so JC and I would like to present to you the Scientist and Technician Award for

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outstanding achievement as a scientist by an engineer.

While the plaque and the check that accompany this award are not as large as some other awards, we hope that they will reflect the appreciation that we have for your efforts on our behalf, and we want you to sincerely know we could not have accomplished our objective without you on the team.

To assist you in constructively using your award check, JC has compiled a list of number combinations that you may wish to consider. He will present this to you at your party.

Again, Ron, I want to congratulate you on your successful career and wish you the best of golf scores on your return.

Ron, I'm truly sorry that I could not be there to participate in your retirement celebration. Instead, I'm learning about diversity at work.

After working with you and JC for the last few years, I feel that I need this training about as much as a five-year-old duck needs swimming lessons. But enough of regrets.

Since we became proficient in video

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technology while we were working together, it seemed appropriate that I record at least a few comments for your celebration.

Just so that you would be able to recognize me, JC and I decided that we would do this in the F.A.C.T. room. As you can see, the room is working perfectly, just as you designed it.

But on a serious note, this technology would not have been realized if it had not been for your efforts.

We greatly appreciate both your willingness to listen to my ideas, concepts of engineering of the chemists, your willingness to use your engineering skills to try and convey the concept to other engineers, and your tenacity and efforts to both find the materials and develop the approaches that actually made the realization of the technology possible. It would not have been done without you.

I also learned a great deal from you during the effort about teamwork and dedication, and I won't forget what you taught me.

Although the Benedum Center lounge and the fourth floor conference room are somewhat permanent, a demonstration of your development,

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we thought it would be appropriate to somehow give you something that would be more closer to home.

So JC and I would like to present to you the Scientist and Technician Award for outstanding accomplishments as a scientist by an engineer.

We realize this award and the accompanying check could not compare with some other awards, but we hope they will reflect the appreciation that we would like to extend to you for the efforts on our behalf. We know that we could not have accomplished that objective without you on the team.

To assist you with respect in using your award, JC has compiled a list of numbers that you might consider. And he will provide that list to you at your party on Friday.

Again, Ron, I want to congratulate you on a successful career and wish you the best of golf scores in your retirement.

(End of playing of videotape.)

Q Now, Mr. Tamol, the portion of RAT-7 that

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we have just viewed, who was the individual on that tape?

A John Lephardt.

Q Was this videotape made on the occasion of some retirement party or event at Philip Morris?

A Yes, it was. It was made for my retirement.

Q Have you seen this particular portion of RAT-7 before?

A Yes, I have.

Q Was there a -- more than this videotape presentation or was this part of a larger videotape, this section?

A No. This was the only videotape section at my retirement.

Q Mr. John Lephardt was at the time a Philip Morris chemist or working in research and development?

A Yes, he was.

Q Mr. Lephardt in the video makes reference to JC. Who is JC?

A That's JC Lang. He was a technician who worked with us on the project.

MR. RUSS HERMAN: Let's look at the remainder of Exhibit RAT-7.

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(Playing of videotape.)

THE NARRATOR: Building designers and operators rearrange their priorities. Outside air was now to be kept outside. An open window represented a heat loss. So more and more buildings were now to be designed as airtight envelopes.

And this coincided with two other fundamental changes over those same 20 years: An increased reliance on synthetic building and furnishing materials, along with an increase in the number of hours people were spending indoors.

Amounting, in fact, to more than 90 percent of their time spent at home, at work or in some form of transportation between the two. No wonder, then, that we're forced to pay more attention today to quality of our indoor air.

In fact, we, ourselves, are affecting this quality all the time with substances from cleaning agents, waxes and solvents, from particle board, wall coverings, paint, foam, carpets, vinyl and rubber flooring, disinfectant and room fresheners, and dozens of other

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elements that go into the construction and furnishing of a building, and by our activities, such as copying, printing, duplicating, cooking, cleaning and simply by living and breathing.

For we, ourselves, are constantly giving off bacteria and skin scales, carbon dioxide, and fumes from dry cleaning, deodorants, perfumes and hair sprays. Then tobacco smoke, too, is seen by many people as a contributor to the mix.

However, it's interesting to note the findings of several major studies on this point. More than 50 percent of the buildings investigated had inadequate or poor ventilation systems.

Whereas, in only 2 to 4 percent of cases in which building occupants complained of sick building syndrome were the complaints ultimately associated with tobacco smoke.

And if ventilation and air filtration aren't adequate, it follows that those substances, many of which can cause discomfort, will not be adequately removed or diluted.

And if air-conditioning units are badly designed or maintained as well, stagnant water

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may collect in which microorganisms can flourish.

Then the very air ventilation system that is meant to provide fresh air may also be delivering bacteria and fungi spores.

However, a well designed and maintained HVAC system is integral to providing acceptable indoor air quality.

A conventional HVAC system introduces the air, usually at ceiling level, heated, cooled and humidified or dehumidified and required to mix with the air already in the room. Used air is then exhausted through ceiling grills.

An interesting alternative to this, used for some years in Scandinavia and Europe and in U. S. industry as well, is the displacement ventilation method which introduces air at the base of the walls or up through the floors.

As air rises, it speeds the natural upward flow of the warm air already in the room and is then exhausted through ceiling grills.

This was the technology Philip Morris engineers used in 1990 to develop the F.A.C.T. system, filtered air control technology.

F.A.C.T. combines existing HVAC

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technologies and components to supply an even upward flow of filtered air, which can improve air quality in a variety of situations. It has proven effective in high density smoking environments.

With F.A.C.T., the used air can be exhausted directly outside or else partially recirculated, mixing with new air from outside, passing through an electronic air cleaner, which removes most particulates, then through an acid-treated activated carbon filter to remove gaseous components.

Then the filtered air passes over heating and cooling coils and is fed by a constant volume blower into a main supply air duct, then through smaller branch ducts in the underflow of plenum, and up through perforations in the raised steel floor.

The floor is covered with standard commercial-grade woolen carpet but with its backing modified to allow air to flow through it. And a simple test with a sheet of paper shows just how well it flows, providing a cushion of air on which the paper flows easily.

Since the air is supplied at 68 degrees,

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F.A.C.T. does not create any sensation of draft on ankles and legs. Its flow rate can be adjusted through the room's occupancy in use and can change its air completely in 2 to 4 minutes.

This means that the airborne substances by which we affect our indoor environment, dust, dirt, skin scales, tobacco smoke, bacteria and so on, will rise vertically above the room's occupants and be removed into the exhaust located in the ceiling.

Since most emissions from human activity are usually warmer than the surrounding air, they will naturally move upwards on thermal currents. The upward flow of the F.A.C.T. system simply speeds up that process.

To show how the F.A.C.T. system performed against the realities of commercial use, it was installed in a 660-square-foot patron lounge as part of the renovation of the Benedum Center for the Performing Arts in Pittsburgh, Pennsylvania. The lounge is used for intermission refreshments and accommodates both smokers and nonsmokers.

This application employs an air-handling system which recycles 50 percent of the room air, mixes it with new outside air prior to

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filtration, and then a cost at volume of treated air moves upwards through the lounge at a rate of 10 feet per minute, so that the room air is completely replaced every 2 minutes.

To evaluate the system, air samples were taken outside the building, in the lobby next to the lounge at floor level, reading zone level, and ceiling level at the front, center, and rear of the lounge during various periods when it was in use.

The results reported here were from the samples taken at the center of the lounge and breathing zone level and the occupancy periods where there were 2 people not smoking, 25 people present not smoking, 33 people, most smoking, an extremely high smoking density here with 44 cigarettes and two cigars being smoked in total, and finally with three people left and everyone else had gone now with no smoking.

The team measured temperature, relative humidity, fine dust and suspended particles, formaldehyde, nicotine, carbon monoxide, carbon dioxide and microbial counts.

Temperatures in the room ranged from 67.8 to 72.6 degrees Fahrenheit. Relative humidity

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levels inside were maintained between 42 and 48.5 percent. RSTs were at 50 micrograms per cubic meter in the outside air and much lower in the lounge.

The formaldehyde levels were consistently below the minimum detection limit of 0.03 parts per million.

Nicotine was less than 0.66 micrograms per cubic meter in every single sample taken, except in the high density smoking period when it was 13.6 and the final period when it fell back down to 0.80 within minutes of the lounge being emptied.

Carbon monoxide measured 2 parts per million throughout the trial, except in the period of high smoking activity when it increased to 3 parts per million.

Not surprising, the CO2 levels changed in line with the number of people present, starting at 350 parts per million, leading at 500 when the room is crowded, and falling to 400 when it emptied.

Microorganisms ranked from a standard of outside air down to 96 in the lounge. No passive organisms were found.

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(End of playing of videotape.)

BY MR. RUSS HERMAN:

Q So far today, on RAT-7, we've just witnessed another F.A.C.T., F.-A.-C.-T., videotape; correct?

A Yes.

Q Are you familiar with this videotape?

A Yes, I am.

Q Was this videotape produced by Philip Morris before you retired?

A Yes, it was.

Q And you had a copy of this videotape that was moved from your home to Ms. Heep's home?

A Yes, I did.

Q The F.A.C.T. system, you explained to us, is an air filtration type system?

A That's correct.

Q It's a system which you were instrumental in really conceiving of and developing while you were at Philip Morris, is that fair to say?

A Yes, as part of a team effort.

Q Did you -- Strike that. Let's go ahead.

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(Playing of videotape.)

THE NARRATOR: There will be more, for the possibilities of this remarkable development are endless for conference rooms, airport and train terminal lounges, shopping malls, restaurants, museums, theaters, movie houses, and designated smoking houses.

We're using energy efficient techniques in designing our buildings, more synthetics to construct and furnish them. We're reducing the amount of air to ventilate them. And then we're spending a whole lot more of our lives in them.

So really, effective ventilation becomes more and more important, and that's why we're constantly evaluating new products and technologies, seeking out new ways to improve the quality of our indoor air.

If you would like to be kept informed of these developments, or if you would like more details on the F.A.C.T. system, call toll free in the United States 1-800-998-F.A.C.T.

(End of playing of videotape.)

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BY MR. RUSS HERMAN:

Q Now, thus far on RAT-7 we have seen three different segments of videotape relating to the F.-A.-C.-T. system, the F.A.C.T. system. Each of those tapes were performed or produced while you were employed at Philip Morris?

A I think it's incorrect. You said three tapes?

Q Three videotape segments on RAT-7.

A Could you define those?

Q Sure. There was something that started off that looked like a very fine published, professionally done marketing tape, which was the first segment on this tape.

A That was on that electrostatic filter, wasn't it?

Q No. I'm speaking about when we were here last week.

A Okay, yes.

Q Am I not correct? You saw it over again.

A Yes, this tape.

Q RAT-7 has -- so far we have seen in the two days of your deposition three segments; correct?

A Correct.

Q Those were all produced at Philip Morris

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while you were employed there; correct?

A Yes, that's correct.

Q When you left Philip Morris, you took those with you; correct?

A Yes, I did.

Q After you left Philip Morris, from the time that you left Philip Morris to the time they ended up at Hatsy Heep's house, did you ever use those tapes in any -- did you ever give those tapes to anyone for any purpose?

MR. DELACROIX: Object to the form of the question.

A Would you repeat it again.

Q From the time that you left Philip Morris to the time those tapes ended up at Hatsy Heep's house, did you give those tapes to anyone physically?

A No, I did not.

Q So they were always in your custody from the time you left Philip Morris to the time they got to Hatsy Heep's, to the best of your knowledge?

A I wouldn't use the term "custody." I would say possession. Yes, they were in my possession.

Q Possession, okay, fair enough.

MR. RUSS HERMAN: Let's look at the rest of RAT-7.

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(Playing of videotape.)

THE NARRATOR: We're very pleased with it and so are our patrons. They find this atmosphere very comfortable, and I enjoy being in this environment. When they come to performances, they look for the space and do spend time here.

(End of playing of videotape.)

BY MR. RUSS HERMAN:

Q As far as we can tell, that ends this Exhibit RAT-7. Let's just go ahead and rewind it, and at this point we'll take about a three- or four-minute break, if that's okay.

MR. DELACROIX: Before you do that, Mr. Herman, let me just state for the record that we reserve any rights that we have to move to strike the portions of this deposition which deal with the showing of this videotape or the segments on this videotape, on Exhibit 7, which the witness has identified as being something he has never seen before and does not recall

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seeing, the bottom line being, he never saw that before.

Along with the fact that this witness testified, I believe, last week and perhaps today that these, in fact, were separate videotapes, the ones he did ID, and that what is being shown to the witness now is a single videotape, Exhibit 7, which apparently is a compilation of various separate videotapes.

MR. RUSS HERMAN: Your objection is noted.

THE VIDEOGRAPHER: We're going off the record at approximately 9:40.

(Recess taken from 9:40 to 9:56 a.m.)

THE VIDEOGRAPHER: We are back on the record at approximately 9:56.

Q Mr. Tamol and Counsel, I'm going to hand you RAT Exhibit 9A, which are Bates stamped 25396, 25394, 25395, 25393. First, I would like you to read the documents, if you would, please.

Sir, first, I want to indicate --

MR. ALLEN: Russ, can you hang on just a minute. I'm not quite through going through these. Sorry.

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MR. DELACROIX: Do you have a signature page or the document entitled Bates number 0025396?

MR. RUSS HERMAN: I was about to say when Mr. Allen asked for more time, that 25396 is the only page of that particular correspondence that I have been able to locate in the documents. There may be more pages, but I haven't been able to locate them.

Q Sir, have you seen these documents before?

A I don't remember them, but they seem that I would have seen them before.

Q Would you look at page 25393 of RAT-9A.

MR. DELACROIX: I object to the form of the question and your characterization of the exhibit, Mr. Herman. I think that's improper.

MR. ALLEN: I join in the objection for the record.

Q Do you see where it says "April 16, Overview of Philip Morris manual. 19, Review Philip Morris and Tamol memos"?

A Okay, 19.

Q Does that refer to materials which you had stored at your home and then materials that were later taken by you to Hatsy Heep's residence?

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MR. ALLEN: Objection. That question goes beyond the scope of permissible inquiry outlined in the order of Magistrate Judge Chasez on November 23. And I'll instruct the witness not to answer.

Q Mr. Tamol, I'm going to hand you RAT-14 and ask you to review this series of documents while I dictate into the record the Bates numbers: 17102 through 17105, 17098, 17087, 17088, 17099 through 17101, 17089 through 17096, 3463 through 3489, 5818 and 5819, 3510, 35825 -- I'm sorry, strike that. -- 5825, 5826, 3548, 3436, 3437, 8971, 8972, 3547, 3546, 3428, 3429, 3430, 3514 through 3521, 3084 to 3088, 3102 through 3196, 3197 through 3201, 3222 through 3236, 3237, 3256 through 3259, 3271 through 3278, 3418, 3419, 3496 to 3509, 3598 through 3613, 3614 through 3619.

When you have had an opportunity to look through these documents, let me know.

MR. ALLEN: For the record, Mr. Herman, I don't think there is any way anyone could read all of the documents.

We skimmed through them and propose we go ahead and permit you to ask whatever questions you would like to put to the witness, with the

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understanding that all he can do in a short time with this many pages is scan through them.

Q Were these documents that I have just identified, to the best of your knowledge and belief, documents related to your employment at Philip Morris?

A Yes, I believe so.

Q And accumulated by you while you were employed at Philip Morris?

A Yes.

Q And retained by you after you retired from Philip Morris?

A Yes, they were.

Q And they were transported from your home to Hatsy Heep's home?

A I believe so.

Q Now, I would like you to just review as we go through these documents -- I won't question you about each document -- I will just ask you some selected questions that relate to these various documents, which, for lack of a better term, I will call the Philip Morris benefits package.

There was a Philip Morris salaried employees' retirement plan; is that correct?

A Yes, there was -- there is.

Q Following your divorce from Ms. Elinor

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Tamol, did you retain an interest in the retirement plan, Philip Morris retirement plan?

A Yes, I did.

Q And the various papers indicate that currently you retain such interest; is that correct?

A Yes, I do.

Q Without going into details, the Philip Morris retirement plan provided for, among other things, investments in Philip Morris common stock, did it not?

A The plan --

MR. ALLEN: I'm going to state an objection at this point. I'm going to permit the witness to answer this question, but I do feel obligated to say that I think we're verging on getting outside the permissible areas of inquiry again.

I don't know what relevance a particular provision of his retirement plan has to any of the permissible areas of inquiry specified by Judge Chasez.

Q Are part of your retirement funds from this plan invested in Philip Morris common stock?

A Yes, they are.

Q If you look at 3463, it looks like what I'm holding up to you, it's titled "Your Personal Benefits

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Report." It's dated 1991 at page 3464. As I recall, you retired in '93; is that correct?

A In '92.

Q 1992. So this benefit -- explanation of your personal benefits that begin with page 3463 in RAT-14 would have been an explanation of benefits in the year before you were retired -- as of the year before you retired?

A That's correct.

Q Just so I don't leave you with an incomplete understanding of this set of documents, there is also a 1990 document that begins on 3481 of the same title.

A Yes, I see it.

Q Now, according to the '91 benefits report, you were receiving health care benefits in connection with your employment with Philip Morris?

A Yes, I was.

Q Did those health benefits continue after your retirement on some modified basis?

A Yes, I believe so. I'm not sure about the modifications, but they continued.

Q You were also receiving disability? You had a disability policy while you were employed by Philip Morris?

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A I'm not familiar with it. I wasn't disabled or anything. There may be something in this literature regarding disability, but I was not disabled.

Q And in addition to a retirement plan, do you recall that there was a deferred profit-sharing plan?

A Yes. That's where the investments were located.

Q That's where the investments in your retirement plan were located?

A Yes, in the profit-sharing area.

Q If you would look at page 3472 and 3473, it indicates, am I correct, the Philip Morris -- at page 3473, Philip Morris common stock under a column marked "PM stock"?

A Yes, I see that.

Q Do you understand or can you explain to me, where it says "PM stock" at the bottom, it says "$409,311.71" -- Do you see that?

A Yes.

Q -- is that the value of your PM stock, your Philip Morris stock --

MR. ALLEN: I'm going to object.

Q -- on that date?

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MR. ALLEN: Objection. That is an inquiry which calls for the witness to explain or interpret or comment on the contents of the document and the substance of the document.

Judge Chasez, I think, specifically directed the witness not to be questioned in that regard. I will, therefore, instruct him not to answer.

MR. RUSS HERMAN: Counsel, every once in a while I'm just going to make the comment that I think -- I disagree with you.

We're going to reserve our rights not only to take the deposition in substance but to complete this deposition where instructions not to answer have been given on issues we think are fairly within the four corners.

The magistrate indicated, I believe, in no uncertain terms, at least it's clear to me, that anything, writing within these documents that we didn't understand what it meant, we could ask for an explanation without getting into the substance.

MR. ALLEN: Let me reply on the record.

MR. RUSS HERMAN: I have made my statement. You have directed him not to answer. Let's move

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on.

MR. ALLEN: I'm going to respond on the record, though, because I think it's important to point out that the judge's order permitting the witness to be questioned regarding the writing on the record was clearly stated in terms of illegible handwritten notations.

Her direction was that the witness could be asked on that matter to decipher a handwritten notation that was illegible.

Your very question demonstrates this is a perfectly legible typewritten number, and, therefore, I will take issue with the characterization of the judge's ordering.

MR. DELACROIX: Just for the record, we join in the objection. We're not instructing Mr. Tamol not to answer. We join in the objection insofar as this is outside of the scope of the judge's order.

MR. ALLEN: And certainly there would be, presumably, opportunities for substantive depositions at a later date. But at this point, Mr. Tamol is simply intending and making certain that he acts in conformity with the judge's order.

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It's only because the judge has directed in my view -- has issued an order which, in my view, proscribes, which I instruct the witness not to answer.

Q On page 3473 under the column "Philip Morris Stock," it says "$409 311.71." Under the column marked "Total," it says "$545,741.84." Under the column marked "Total Contributions to Date," it says "$143,282.32."

The title of this is "Deferred Profit-Sharing Plan, December 31, 1991 Account Values."

To the best of your knowledge and information as of December 31, 1991, was your deferred profit-sharing plan at Philip Morris valued at a total of $545,741.84?

MR. ALLEN: Same objection. Same instruction to the witness. We'll stipulate that the document says what it says. I don't think you need to inquire to decipher that. It's not illegible and goes beyond the order of the judge.

Q Isn't it true, sir, that by violating your confidentiality agreement with Philip Morris in taking documents from Philip Morris after your retirement,

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bring them to your house and then bring them to Ms. Heep's house, that you were in jeopardy of forfeiting Philip Morris benefits?

MR. ALLEN: Objection. The witness is instructed not to answer that question. Clearly, it exceeds the constraints required or specified by the judge regarding permissible areas of inquiry. I instruct him not to answer that question.

MR. COPLEY: I object to the form of the question.

MR. DELACROIX: I object to the form of the question, also, Mr. Herman.

Q Isn't it true, sir, that your personal funds invested in Philip Morris common stock, as well as your retirement invested in Philip Morris common stock, was placed in jeopardy by the disclosure or documents in your handwriting such as "How much nicotine required to hook a normal person"?

MR. ALLEN: Same objection. Same instruction to the witness. I also object as to form.

MR. DELACROIX: Same objection as to the form of the question.

MR. COPLEY: Object to form.

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Q Didn't you watch Mr. Uydess' disclosure on 60 Minutes about Philip Morris in March of this year, 1996?

MR. ALLEN: Same objection.

MR. DELACROIX: Object to the form of the question.

Q Sir, didn't you complain to Ms. Heep and to others in watching the 60 Minutes disclosure by Mr. Uydess of -- formerly of Philip Morris that it was placing your retirement investment funds in jeopardy?

MR. ALLEN: I have the same objection, though I will inquire, Mr. Herman, if you are representing to the witness that Ms. Heep has attributed such a statement to him and are asking whether he made that statement, then that is certainly permissible under the judge's orders, and I would withdraw the objection.

I don't think that's the way you phrased it. As posed, I will object and instruct the witness not to answer.

But I want to make clear to you that I'm not trying to cut off a permissible avenue of inquiry which allows you to ask him whether he said things to Ms. Heep and attributed to him.

Q Isn't it true that one of the reasons you

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got very angry at Ms. Heep and started cursing her and mistreating her was because she disclosed to Mr. Lephardt of Philip Morris that you had these documents, such as the documents that relate to how much nicotine it would take to keep someone hooked?

MR. ALLEN: Same objection. Same instruction to the witness.

MR. DELACROIX: Object to the question and object to the form of the question and move to strike the question as being beyond the bounds of Magistrate Judge Chasez's order in that Rule 30(d)1, I think, it's an improper question.

And this line of questioning I think is improper and more in line with questions that may be allowed at the substantive deposition of Mr. Tamol which Judge Chasez envisions down the road but not taking place at this deposition today.

MR. COPLEY: Object to form and improper predicate.

Q Mr. Tamol, in reviewing the various agreements that you signed with Philip Morris, which include Exhibits 2, 3, 4 to your deposition, there is a paragraph which requires you to cooperate in assisting Philip Morris in litigation, and indicates

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that Philip Morris is going to reimburse you for your time and expense in that regard.

Are you being reimbursed for your time and expense by Philip Morris in this matter?

MR. ALLEN: Same objection. Same instruction to the witness.

MR. DELACROIX: Object to the form of the question.

MR. GAY: Also, I object to any mischaracterization of the document.

Q Is Philip Morris providing you with independent counsel in this action?

MR. ALLEN: Object to the form of the question, and object on the basis that it goes beyond the judge's order.

Q Is Philip Morris paying for providing you counsel in this matter?

MR. ALLEN: Same objection and same instruction to the witness.

I will just note in order to save needless repetition, the objection will be continuing and the instruction to the witness will be continuing for so long as this line of questioning continues.

Q Did you have dinner with Mr. John Lephardt

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of Philip Morris, Mr. (sic) Hatsy Heep, and Mr. Lephardt's significant other between September 1995 and April 5, 1996?

MR. ALLEN: Again, Mr. Herman, I think the question exceeds the scope of inquiry that is permissible under Magistrate Judge Chasez's order May 23. For that reason and solely for that reason, I instruct the witness not to answer the question.

If it goes to substantive matters, that can be inquired into at a later date.

Q Ms. Heep says in her statement and in her deposition that on at least two occasions she had dinner with you, with Mr. Lephardt and Mr. Lephardt's significant other. Isn't that true?

MR. ALLEN: Again, what Judge Magistrate Chasez allows is that Mr. Tamol may be questioned on whether and under what circumstances a statement attributed to him by Ms. Heep may or may not have been made, not a social calendar or the truth of the statement.

So if you're inquiring did he make a statement that Ms. Heep attributed to him, that is certainly permissible. Otherwise, I'm going to repeat my instructions to the witness.

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MR. DELACROIX: We join in the objection, Mr. Herman, unless the question goes to alleged document destruction or references a statement that Hatsy Heep made in her sworn deposition testimony that she attributed to Mr. Tamol, I think that's outside the parameters and bounds of Judge Chasez's order for this limited-scope deposition.

Q After your dinner with the Lephardts during which Ms. Heep discussed the Philip Morris documents which were in her basement, isn't it true that you were requested to remove those documents from Ms. Heep's house?

MR. ALLEN: Objection.

MR. COPLEY: Object to form.

MR. DELACROIX: Object to form and improper predicate.

MR. ALLEN: Improper predicate, object as to form, and object because it exceeds the scope of the order setting what is permissible in this limited deposition.

Q Isn't it true that Mr. Lephardt called Ms. Heep and offered to destroy and remove the Philip Morris documents that were in her home?

MR. ALLEN: Same objection. Same

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instruction to the witness not to answer the question.

MR. COPLEY: Object to form.

Q Isn't it true that Mr. Lephardt participated in meetings and phone calls and discussions with you about getting those documents out of Ms. Heep's house?

MR. ALLEN: Same objection.

MR. COPLEY: Object to form.

Q And participated with you in discussions and activities to trash, destroy or remove those documents? Isn't that true?

MR. COPLEY: Object to form.

MR. ALLEN: Same objection. Again, only because we're to be careful to conform with the order of the judge.

This is certainly a permissible area of inquiry, and it's one we look forward to responding to when a substantive deposition takes place. At this time it's improper.

Q Did you tell Ms. Heep "You got to keep your mouth shut" about this, about these documents?

MR. ALLEN: You can respond to that.

A No, I never said that.

Q Did you tell her that she couldn't talk

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about them?

A No, I never said that.

Q Didn't you tell Ms. Heep that it would hurt you with Philip Morris when they discovered that you had these documents from Philip Morris?

A No, I never said that.

Q Did you ever get written consent from Philip Morris to disclose to anyone the documents, including your notes about nicotine and how much nicotine would be required to keep a normal person hooked?

MR. ALLEN: Objection.

MR. DELACROIX: To form of the question.

MR. ALLEN: Instruct the witness not to answer.

Q Isn't it true that because you didn't have written permission from Philip Morris to have custody of these documents or to reveal them to Hatsy Heep or anyone else that you were in violation of your agreement of April 30, 1992, identified as Exhibit 4?

MR. ALLEN: Objection for the reasons previously stated, and because it calls upon the witness to draw a legal conclusion as well.

MR. COPLEY: Objection to form.

Q Isn't it true that you knew you were in

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violation of the April '92 agreement with Philip Morris because you had agreed not to disparage, discredit, or otherwise treat in a detrimental manner Philip Morris, and you knew that the disclosure of these documents was in violation of that agreement?

MR. ALLEN: Same objection, same instruction to the witness.

MR. COPLEY: Objection to form.

Q Wasn't that your motive or one of your motives for trashing documents which you had taken from Philip Morris or assisting in the trashing and removal of those documents?

MR. ALLEN: Objection for the reasons previously stated and because of its improper predicate and as to form.

MR. COPLEY: Objection to form.

Q You also knew that these documents contained materials which showed that you lied to OSHA, including the F.A.C.T. videotapes in Exhibit 7, and you told Ms. Heep that you lied to OSHA or governmental agencies, didn't you?

MR. ALLEN: Mr. Herman, if you will ask the second part of your question, that's permissible. As phrased, the question exceeds the restrictions contained in Magistrate Judge

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Chasez's order.

I will permit the witness, if you will restate it, to respond to your inquiry about whether he had made an utterance attributed to him by Ms. Heep. Otherwise, I instruct him not to answer the question.

Q One of the reasons that you were angry with Ms. Heep was because you knew that you had lied to OSHA and that there were various government investigations going on regarding government hearings and lying by Philip Morris officials; isn't that true?

MR. DELACROIX: Object to the form of the question. Improper predicate.

MR. ALLEN: Object to the form of the question for improper predicate and for the reason that it exceeds the area of inquiry permitted under Magistrate Judge Chasez's order for this limited deposition.

Q Looking at Exhibit RAT-14, for example, 3084, there is a summary of your benefits, is it not?

MR. ALLEN: Object. 3084?

MR. RUSS HERMAN: Yes.

MR. ALLEN: Is it near the top of the stack, Russ, or near the bottom?

MR. RUSS HERMAN: Why don't you take mine.

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It would be easier.

MR. ALLEN: If it will help you, Russ, we will stipulate that 3084 through 3088 appear to be a preprinted document entitled "Philip Morris Summary Annual Reports of Benefit Plans." I don't know what specific question you have for the witness.

MR. RUSS HERMAN: I'll just accept the stipulation. We'll move along.

Q Let me show you exhibits beginning with 3102 through 3196 relating to the Philip Morris Matching Gift Plan, the Philip Morris Scholarship Program, the Philip Morris Student and Loan Programs, Business Travel and Accident Plan, Philip Morris Dental Plan and other medical plans, and ask you if these documents formed part of your benefit package at Philip Morris while you were employed there.

A Yes, they were.

MR. ALLEN: If it helps, Russ, we'll offer the same stipulation, that these documents appear to be preprinted summaries describing various benefits extended by Philip Morris to employees. They appear to be that.

Q I would like you to look at the Philip Morris Companies, Inc., "A Legal Guide for Employees,"

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beginning at page 3222 and moving through 3236. Do you recognize this document, sir?

A No, I don't.

Q Never seen it before?

A I don't remember seeing it.

Q Ever looked at this document or reviewed it?

MR. ALLEN: Asked and answered. The witness has already said that he doesn't remember seeing it.

MR. COPLEY: Objection.

Q Before today, have you ever looked at this document or reviewed it, sir?

A I would say no, not to my recollection.

Q Do you know how it got to Hatsy Heep's house?

MR. DELACROIX: Object to the form of the question. I think that's an improper predicate. He hasn't seen it before, so there is no testimony from this witness that it got to Hatsy Heep's house.

MR. ALLEN: I will permit him to answer the question.

A Could you repeat the question, please.

Q Yes. Do you know how this document got to

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Hatsy Heep's house?

A I would assume it was in my files under Philip Morris employee benefits or employee information file.

Q Since you're not familiar with it, I will ask you to take a moment, if you would, and read the first paragraph on page 3224, if you would, or read it aloud for the court reporter, please.

MR. ALLEN: I'm going to --

MR. DELACROIX: I object, Mr. Herman. I think the document speaks for itself.

MR. ALLEN: The document speaks for itself.

Q I will read it aloud for the purpose of the court reporter. "The purpose of this Guide is to help the Company's employees handle legal issues by recognizing them and by using the Company's legal resources to solve them. The Guide provides brief discussions of certain, but by no means all, significant legal issues which arise in the course of the Company's day-to-day operations. It is hoped that the Guide, through its exposition of basic legal rules and principles, will enable you to avoid creating or aggravating legal problems in the first instance. An equally important objective of the Guide is to sensitize employees to the variety and complexity of

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legal issues which confront the Company and to encourage them to turn for assistance to the Company's lawyers, who are equipped by professional training and experience to analyze legal problems and recommend solutions."

Before -- or after you left the company and before you testified before OSHA, did you meet with any Philip Morris lawyers, either in-house lawyers or lawyers with law firms outside of Philip Morris?

MR. ALLEN: Does this sound correct, is this after he left the company but before he testified before OSHA?

MR. RUSS HERMAN: Yes.

A No, I did not.

Q After you testified before OSHA, did you ever -- Strike that.

After you left the company and before you testified at the OSHA hearings, did you have any telephone discussions with any lawyers about your OSHA testimony?

A No, I did not.

Q While you were employed at Philip Morris, did you have any discussions with any lawyers at Philip Morris about any testimony you might give in the future regarding OSHA or other governmental

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matters?

MR. ALLEN: This is, again, from retirement to his testimony at OSHA; is that correct?

MR. RUSS HERMAN: No.

MR. ALLEN: I want to make sure I understand the question.

Q While you were employed at Philip Morris, did you have any discussions with any Philip Morris attorneys as to future testimony you might give to governmental agencies or OSHA?

A No, I did not.

Q Did you have any discussion with Philip Morris lawyers in any way related to tobacco interests after you retired from Philip Morris?

MR. ALLEN: Object to the question to the extent that it is phrased in such an open-ended way that it would encroach on matters of privilege.

I have no objection to your inquiry along this line, Mr. Herman, of up until April of this year I think would be the operative date.

But to the extent you get into questions involving counsel, consultation with counsel after that date, then I will instruct the witness not to answer.

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Does that help you? Maybe you can rephrase your question.

Q From the date of your retirement until March 31, 1996, did you have any discussions with any Philip Morris lawyers?

A No, I did not.

Q Did you have any discussions with any Philip Morris employees who discussed with you any recommendations or information from Philip Morris?

MR. ALLEN: Can we go off the record for a second.

THE VIDEOGRAPHER: We're off the record.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record.

MR. ALLEN: If you repeat the question, I don't have any objection to the him answering the question.

MR. RUSS HERMAN: Do you want to read the question back, please.

(The following was read back: Did you have any discussions with any Philip Morris employees

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who discussed with you any recommendations or information from Philip Morris?)

A No, I did not.

Q From the time that you retired until March 31, 1996, did you have any discussion with Philip Morris employees who related to you any information from Philip Morris lawyers?

A No, I did not.

Q From April -- From March 31st to the present, have you had any discussions with Philip Morris lawyers about any of the information contained in Hatsy Heep's statement?

MR. ALLEN: Objection. I invoke the privilege and instruct the witness not to respond to the question.

I will tell you for the record, Mr. Herman, that any answer that would be responsive to your question would involve the witness' actions undertaken after advice of counsel and at the instruction of counsel and during and with consultation by counsel.

For that reason, I'm instructing him not to answer.

MR. RUSS HERMAN: What privilege are you

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asserting?

MR. ALLEN: My privilege -- Mr. Tamol's privilege.

MR. RUSS HERMAN: Of what?

MR. ALLEN: Attorney/client privilege and work product privilege.

Q Mr. Tamol, have you employed any Philip Morris lawyers since retirement?

A No, I did not.

Q Have you sought any legal advice from Philip Morris lawyers since retirement?

MR. ALLEN: Answered.

A No, I did not.

Q I'm going to ask you again, did you meet with Philip Morris lawyers since March 31, 1996, to discuss any of the matters contained in the Heep statement?

MR. ALLEN: Objection. Invoke the privilege.

I also will say that the question inquires into matters that exceed the scope of the order that Magistrate Judge Chasez entered May 23.

It's unrelated to any of the areas of inquiry she has directed may be inquired of to the witness.

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For that reason, I instruct the witness not to answer.

MR. BERTAUT: I note an objection as to form.

MR. RUSS HERMAN: Counsel, in accord with our local rules, I am advising you we're going to move for sanctions in connection with Mr. Tamol's deposition.

First of all, even if a privilege existed, even if it existed, it's within the scope of proper examination to ask if A met with B without going into the subject matter.

Secondly, it cannot fall within the attorney/client privilege if Philip Morris lawyers, as the witness has said under oath, were not acting for him and he -- and were not representing him. So clearly, there is no attorney/client privilege communication.

Ms. Heep's statement is replete with references to Philip Morris lawyers' contacts with Mr. Tamol, Philip Morris lawyers coming to her house, Philip Morris lawyers calling on the phone, Philip Morris lawyers urging the destruction of documents.

So these questions are relevant and

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material and within the scope and certainly by no stretch of the imagination are privileged.

MR. ALLEN: Let me respond.

MR. RUSS HERMAN: I only make that explanation because, under our local rule, we're required when we -- to indicate when we're going to move for sanctions and the basis for it.

I further want to indicate, we have come to the deposition at no small expense, and we'll move at the appropriate time for the expenses of the deposition also to be charged to Mr. Tamol.

MR. COPLEY: Which local rule is that, Russ?

MR. RUSS HERMAN: Take a look at the Fifth Circuit rulings and particularly Judge Schwartz's ruling in the Yamaha case.

MR. COPLEY: It's not a local rule? It's case law?

MR. RUSS HERMAN: It's very clear.

MR. ALLEN: Mr. Herman, I do want to respond just very briefly to the specific basis for your intended Motion for Sanctions, that being the allegations that you -- that are made by Ms. Heep which you characterize as being replete with assertions that meetings took place

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between Mr. Tamol and Philip Morris lawyers.

You have inquired into that matter because those allegations, as I understand them, from Ms. Heep suggest that such meetings took place prior to March 31, 1996.

You have inquired of the witness as to whether there were any discussions that he had with any PM lawyers during that period of time, any discussions with any PM employees during that time, any information conveyed to him from PM lawyers through PM employees during that time. He has responded to those questions.

That said, I recognize your right to seek whatever sanctions that you think are appropriate. My advice to the witness continues.

MR. DELACROIX: Mr. Herman, I'm going to ask if we can take a five-minute break right now.

THE VIDEOGRAPHER: We're going off the record at approximately 10:54.

(Recess taken from 10:54 to 11:13 a.m.)

THE VIDEOGRAPHER: We're back on the record

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at approximately 11:13.

MR. ALLEN: Let me, Mr. Herman, if I may, interject here and make a statement for the record. I fear that I have helped create some confusion concerning some of the dates or specific periods of time about which you have questioned Mr. Tamol.

We have been making references to March 31, 1996, as though that were the date which constitutes a line of demarcation, and I have not objected to any questions put to Mr. Tamol regarding the period of time prior to that, specifically, whether he had met with Philip Morris attorneys prior to March 31, 1996, whether he met with Philip Morris employees prior to March 31, '96.

Let me tell you that I believe the date on which Ms. Heep first made the allegations that ultimately brought us here today was April 5, Good Friday, 1996.

I would not have any -- It was that week that Mr. Tamol retained my law firm. I will tell you, he retained the law firm initially for the purposes of securing assistance in retrieving his personal belongs from the house

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that he previously shared with Ms. Heep.

It was at that point that he retained my law firm, and it would be at that point at which a privilege would attach.

So it would be for the period beginning the week of April 5th, not March 31. It would be after that, the period after that that would be covered by any privilege.

Now, having said that, let me also tell you, we may, in view of your objections, reconsider whether we assert the privilege, but I reserve the right to.

And in any event, my objection to questions which relate to the period after April 5 is based on the fact that they exceed the scope of Magistrate Judge Chasez's orders.

I don't know if that is helpful, if I have clarified anything. If you want to inquire whether between March 31 and April 5 there were meetings between Mr. Tamol and Philip Morris attorneys or he received instruction from Philip Morris attorneys or Philip Morris employees, I have no objection to your making those inquires.

But I think that from the period subsequent to that, I would instruct him not to answer.

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I would also tell you, Mr. Herman, that I believe -- it is my understanding Philip Morris has produced to you an undertaking signed by Mr. Tamol which would speak for itself and which is certainly something that nobody is trying to hide and which would provide you with the answers to many of the questions that you have asked to which objections have been posed.

MR. RUSS HERMAN: I don't know if I have seen that document or not. As far as I know, it hasn't been produced yet. But I was told during the recess, it might be produced or it would be produced later today.

MR. DELACROIX: Mr. Herman, that document forms part of our response to -- it's either your request number 3 or number 4 for post-Tamol-related correspondence with the company, and that's included therein. You will have a copy of that today for your use today.

MR. RUSS HERMAN: The only thing I'm saying, as of this moment I haven't received it. When I do, we'll get to that.

Q Mr. Tamol --

MR. ALLEN: I just didn't want to confuse things.

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Q Mr. Tamol, from January 1, 1995, through April 5, 1996, did you have any discussions or correspondence or writings directly or indirectly with any lawyers working on Philip Morris' behalf?

A No, I did not.

Q From April 5, 1996, until today, have you had any discussions or writings or communications with any lawyers working on Philip Morris' behalf, either directly or indirectly?

MR. ALLEN: There I will interpose an objection, and my objection is based on the fact that it exceeds the scope of the order entered by Magistrate Judge Chasez.

I will tell you without waiving the objection that any contacts he has had have been through me or my law firm, and we would reserve the right to assert those actions of privilege.

But for the moment, the instruction to the witness not to answer the question is based on the fact that it exceeds the scope of Judge Chasez's order.

Q Outside of the deposition room in which your deposition is being taken, have you met with any Philip Morris lawyers since April 5, 1996, that is, lawyers hired by Philip Morris or representing them in

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any capacity?

MR. ALLEN: The same objection as posed. The same instruction given to the witness.

MR. RUSS HERMAN: We'll reserve our rights on sanctions.

I have marked the "Philip Morris Companies, Inc., A Legal Guide for Employees," Bates stamped 3222 through 3236, which is a 24-page document, with the Exhibit Number RAT-14A.

Q I would like you to turn to the inside cover that lists the table of contents.

MR. DELACROIX: Object to the form of the question. In your reference to -- your characterization of the name of this exhibit, Mr. Herman, I think it's an improper characterization.

MR. RUSS HERMAN: Just tell me what your problem is, maybe I can cure it.

MR. DELACROIX: I think you should use the initials for this exhibit during this deposition rather than your pronunciation. I think it's improper. I think it's improper. I think it may border on -- I think it's improper.

MR. RUSS HERMAN: I think you will find that Mr. Tamol has referred to himself the same

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way that I have. It has no connotation whatsoever, other than standing for the initials Ronald A. Tamol. I said that at the beginning of the deposition. I don't know what your problem is.

At any rate, you made your objection.

MR. DELACROIX: We note our objection. Move on.

Q Would you look at "Philip Morris Companies, Inc., A Legal Guide for Employees," the xeroxed page that has the table of contents in Exhibit 14A.

On the left-hand side dated January 19, 1990, it says in part, "If you are ever in doubt as to the legality of a particular practice, it is your responsibility to consult the Legal Department." Do you see that, sir?

A Yes, I do.

Q Was that ever told to you?

MR. ALLEN: Objection. It exceeds the parameters set forth by Magistrate Judge Chasez for this limited deposition.

Q Did you ever contact anyone in Philip Morris' legal department or any attorney retained by Philip Morris as to whether it was proper or legal for you to retain originals and copies of Philip Morris'

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documents after you left Philip Morris and retired in September of 1993?

MR. ALLEN: You can go ahead and answer that.

A Again, the question is -- What is the first part? Did I contact Philip Morris lawyers at any time?

Q Yes. Did you contact Philip Morris lawyers at any time regarding the fact that you took with you your original notes from Philip Morris and other documents or copies of Philip Morris documents?

A No, I did not.

Q Did you ever ask the Philip Morris legal department whether you could do that?

A No, I did not.

Q Did you ever ask anybody at research and development in a supervisory position to you whether you could do that?

A No, I did not.

Q Did you ever ask anyone at Philip Morris in a higher position than you at Philip Morris whether you could take the Philip Morris documents with you?

A No, I did not.

MR. RUSS HERMAN: The testimony of the witness in connection with it, we'll attach the

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exhibit, Exhibits 9A, 14, 14A.

MR. ALLEN: Russ, could I inquire, and perhaps it's just my faulty memory, but as you hand me what has been marked RAT-15, I confess not to recognizing at least a portion of it.

It brings to mind a question: Were all the documents that you received from Ms. Heep turned over to the FBI? Because those presumably were turned over to us, and I'm seeing things that I don't know I have seen before.

MR. RUSS HERMAN: As far as I know, anything we got, we alerted the FBI in accord with their prior discussions with us. We turned over originals and got copies.

MR. ALLEN: Of everything that had been delivered to you by Hatsy Heep?

MR. RUSS HERMAN: I believe that's true.

MR. ALLEN: Maybe we got it. I just don't recall seeing it. That looks new to me.

Q I'm going to show you RAT-15, which appears to be a -- to me to be a number of documents that help us understand your employment history.

For example, there is a letter from Cornell and a letter from -- dating to February 7th, that's Cornell Aeronautical Labs, a letter from

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McCraw-Hydrocarbon, a letter from Davidson Rubber Company to -- and some other materials that predate your employment with Philip Morris.

As you look through these documents, there is a document, December 7, 1962, from Mr. Robins at Philip Morris, 26211, in which you were offered a position in the research center as associate engineer in the development division. Do you see that, sir, 26211?

MR. ALLEN: Is that near the beginning or the end of this stack of documents?

A I have 26213, but we don't have 26211.

MR. ALLEN: Got it.

Q Now, I will ask, if you would, to just take a second and read the December 7, 1962 document, identified as 26211.

MR. ALLEN: All right.

A Yes.

Q That was -- Looking at RAT-7, the letter of December 7, 1962, from Mr. Robins of Philip Morris to yourself, this was your original notification of employment with Philip Morris; is that correct?

A Yes, it was.

Q In February of 1963, if you look at document 26214, Mr. Wakeham, W-a-k-e-h-a-m, provided

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you with the research center organizational pattern; correct?

MR. ALLEN: Give us a minute to review the document.

A Correct.

Q On January 18, 1965, if you look at document 26227, the brand development group was created, and you were transferred from the by-product development division to the cigarette development division effective February 1, 1965?

MR. ALLEN: 26227; is that correct?

MR. RUSS HERMAN: That's correct. It's a letter from Mr. R. B. Seligman, S-e-l-i-g-m-a-n, to Mr. R. Saleeby, S-a-l-e-e-b-y, with a carbon copy to Dr. H. Wakeham, Mr. R. Tamol, and Mr. H. Merritt.

MR. ALLEN: 26227; correct?

MR. RUSS HERMAN: Yes.

(Off the record.)

THE VIDEOGRAPHER: It's approximately 11:34.

Q Just so we can -- Strike that.

You have RAT-15, and do you now have in

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front of you exhibit page 26227?

A Yes, I do.

Q That is a letter of January 18, 1965, in which you were transferred from the by-product development division to the new brand development group effective February 1, '65; correct?

A That's correct.

Q At the bottom of the page, there is a signature I can't make out. Would that be Mr. Seligman's signature?

A I can't make it out, either. That should be his signature. I assume it is.

Q This was sent from Mr. Seligman to Mr. Saleeby?

A That's correct.

Q What was Mr. Seligman's position at this time?

A It is Dr. Seligman. He was director of development, the development division.

Q What was Mr. Saleeby's position?

A I'm not quite sure. I think he was in New York. I don't know.

Q What was Dr. Wakeham's position?

A He was vice-president of R&D.

Q And Mr. H. Merritt?

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A Henry Merritt was project leader, or -- I believe, I'm not quite sure, but I reported to Henry Merritt. Maybe he became manager then, I'm not sure.

Q Further on in this Exhibit RAT-15 are various resumes, some are handwritten, some are typed, and I'm going to direct your attention, beginning with 25350, through the remainder of this exhibit, that is, RAT-15, and ask you if these were resumes prepared by you at various times during your employment career either at Philip Morris or elsewhere.

A Yes, I would say they are either finished or partially-finished resumes.

Q In connection with your testimony, I'm going to attach RAT-15 to the deposition.

RAT-17 consists of documents numbered 2907, 2952, 2947, 2948, 2949, 2950, 2951, 2396, 2397, 2398, 2397 --

MR. GAY: You meant 3279?

Q Yes, I'm sorry. I have to go back. 2398, 2397, 2398, 3279, 3280, 3281, 3771 through 3789, and then a page that appears to be solid without any print on it, 3304.

My questions to you: Are these documents which you either prepared or received during your employment at Philip Morris in connection with your

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job?

MR. ALLEN: If I can help, correct me if I'm wrong, Mr. Tamol, the blank page at the end, 0003304, he obviously can't tell whether that's a document he prepared or received.

He's also identified 0003279 through 3281 as one he does not recognize as having prepared and received it.

A Let me qualify that, through Philip Morris. This July '94 is a document I did not receive when I was employed by Philip Morris.

Q It's dated after -- actually dated, as I see, after your --

A -- retirement.

Q -- retirement from Philip Morris?

A That's right.

MR. RUSS HERMAN: With everybody's permission, I'm just going to remove from this set of documents 3279 through 3281. We'll get back to those later.

MR. ALLEN: You mean later, or do you want them back?

MR. RUSS HERMAN: Why don't you give them back to me, and we'll redistribute it. I think it will be easier.

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Q Sir, let me ask you this question: Exhibit RAT-17, as it's presently organized, were these documents that were either generated by you or received by you at Philip Morris in connection with your job?

A Yes. Some are generated by me, and it looks like others were generated by others, and I apparently received them when I was at Philip Morris.

Q These documents, again, were brought by you from your home to Hatsy Heep's home?

A I assume I did.

MR. RUSS HERMAN: These documents, for purposes of the record and in order to fairly communicate with counsel, representing other defendants are organized because they show activities with regard to brand names of tobacco products manufactured by other defendants in this litigation.

I don't have any other questions about this exhibit. I will provide other counsel with my copy so they can look at it during lunch. And it will speed up, perhaps, some interrogation they may not want to have or may have later in the deposition. But I would like my copy back when you folks get back.

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MR. BERTAUT: Russ, just for the sake -- I don't know that anybody here has any objection to this, to the extent there would be any objections, we can reserve any until we have looked at those?

MR. RUSS HERMAN: Sure. You can take whatever action you want with regard to -- I think it's RAT-17. I just want to put you on fair notice that it's there.

I don't have any questions about it. You may have, or you may have objections or whatever.

Q Sir, I have placed before you Exhibit RAT-19. If I'm correct, all of these documents in RAT-19 relate to the F.A.C.T., F-A-C-T, capital F-A-C-T, system in one way or the other?

MR. ALLEN: Excuse me. Are you finished, or are you asking him whether that is the case?

MR. RUSS HERMAN: I haven't asked him that yet.

Q So the first question I'm going to ask you before I get to this: In putting these documents together and in reviewing the documents that we received from Ms. Heep, sometimes there is information about F.-A.-C.-T. and sometimes about P.-A.-C.-T. Is

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there a difference?

A I don't remember what P.-A.-C.-T. stands for. But that was the initial connotation for these investigations. Then later on it was changed to F.-A.-C.-T. quite far down the road. Essentially, they are the same kind of thing.

Q So Exhibit RAT-19 contains various documents that relate to the development of the F.-A.-C.-T. system, F.A.C.T., even though some of the documents may be labeled P.A.C.T., P.-A.-C.-T.; correct?

A That's correct.

Q I would first like you to go through these documents and see if I'm correct that they relate in some way to the F.A.C.T, F.-A.-C.-T., system.

MR. ALLEN: The document marked 0026152 is one that the witness would identify as not relating to the F.A.C.T. system and appears to be in someone else's handwriting and just can't be identified.

THE WITNESS: I would guess it was Hatsy's handwriting.

MR. RUSS HERMAN: Let's remove, with permission of everyone, 26152 from RAT-19.

Let's go off the record a second.

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THE VIDEOGRAPHER: We're going off the record at approximately 11:53.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record at approximately 11:54.

Q Do all of the documents in RAT-19 as presently constituted relate to the F.A.C.T., F.-A.-C.-T., system in some way?

A They would appear to be, yes.

Q Some of the documents in RAT-19 which relate to the F.A.C.T. system predate your retirement from Philip Morris in September of 1993; is that correct?

A No. That's not correct. Actually, I retired in April of '92, but there are some documents that are before that date.

Q Some of the documents in RAT-19 regarding the F.A.C.T. project, the development, predate your retirement from Philip Morris, and some of them postdate your retirement from Philip Morris; is that correct?

A That's correct.

Q The ones that postdate your retirement from

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Philip Morris are generally described as the Ronnell, Inc., documents, relating to Ronnell's continued interest in or development of the F.A.C.T. system; is that correct?

A That's correct.

Q Now, the documents contained in RAT-19 that predate your retirement from Philip Morris, were these documents either developed by you in connection with your job at Philip Morris or received from others who were employed by Philip Morris before your retirement?

A Yes, they were.

Q Were these documents which are in RAT-19, were these documents that were brought by you from your home to Ms. Heep's home?

A Yes, they were.

Q I have handed you Exhibit RAT-20A. For purposes of description, these refer to Tobacco Chemists Research Conferences -- capital "T," Tobacco, capital "C," Chemists, capital "R," Research, capital "C," Conferences. Did you have occasion while you were employed at Philip Morris to attend these conferences?

A Yes, I attended several of these conferences. They are on a yearly basis.

Q These documents are in connection with the

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conferences you attended while you were employed at Philip Morris?

A It appears to only be one conference, which would be the one in Montreal.

Q So all of the documents in RAT-20A relate to the Montreal October 28th through 30, '78 conference; is that correct?

A They appear to be, yes.

Q These documents were brought by you from your home to Hatsy Heep's; is that correct?

A Apparently they were.

Q The documents RAT-21 purport to be documents that relate to your duties as plant engineer for the research center beginning with the document dated October 30, 1973.

The only question I have for you: Are these documents that you either received from Philip Morris or helped generate for Philip Morris in connection with your duties as plant engineer?

A Yes, they were. They appear to be.

Q These are documents that were brought with you from your home to Ms. Heep's home; is that correct?

A Yes, they were.

MR. RUSS HERMAN: It's five after noon.

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Let's go off the record for a moment and have some discussion.

THE VIDEOGRAPHER: We're going off the record at approximately 12:03. We're off the record.

(Luncheon recess taken from 12:03 to 1:34 p.m.)

THE VIDEOGRAPHER: We're back on the record at approximately 1:34.

Q Mr. Tamol, your counsel has provided me with a two-page agreement dated May -- Strike that. -- a two-page document entitled "Undertaking" dated May 24, 1996 in Richmond, Virginia. I have identified it for the record as RAT-4A and PMI545 to 546. Do you see that document?

A Yes, I do.

Q Is that your signature?

A Yes, it is.

MR. ALLEN: We'll stipulate it's his signature on both PMI50045 and PMI50046.

Q This document indicates that Philip Morris has agreed to pay you your reasonable legal fees and expenses in connection with this deposition; is that

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correct?

MR. ALLEN: Objection. The document speaks for itself.

Q Am I correct, sir?

A Yes.

MR. ALLEN: For the record, in connection with that exhibit or related to it, let me make the representation to you that my law firm was retained by Mr. Tamol prior to the delivery by Ms. Heep of documents to the POC and her statement of April 5.

I don't want there to be any confusion or any misunderstanding or inference that Philip Morris retained me for Mr. Tamol, quite to the contrary.

The sequence was Mr. Tamol retained the law firm. Then I made demand on his behalf to Philip Morris under the termination agreement that is already in evidence for indemnification of his legal expenses, and Philip Morris acquiesced in that demand. It was that series of events which resulted in this "Undertaking."

Q If you would remove from the exhibit that I handed you Bates 15351 -- Scratch that.

MR. RUSS HERMAN: Let's go off the record a

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second.

THE VIDEOGRAPHER: We're off the record at approximately 1:30.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record at approximately 1:40.

Q Mr. Tamol, I have handed to you and counsel RAT Exhibit 16. These purport to be various documents related to the research and development division at Philip Morris while you were employed at Philip Morris.

I would like you to look at the first document. It's dated April 6, 1965, from Mr. Deszyck, D-e-s-z-y-c-k, to those listed. The subject is an Orientation Program for Mr. Henry Secor. Do you recognize this document?

A Yes, I do.

Q It's a document that was sent to you by a Philip Morris employee in connection with your 25th anniversary party?

A No. If I recall, it was sent to me on my retirement time, if I recall correctly.

Q On your retirement?

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A Retirement, yes.

Q The individuals listed on this sheet were Philip Morris employees at the time of April 6, 1965?

A Yes, they were.

Q At that time it lists yourself under brand development; is that correct?

A That's correct.

Q The first name is a Mr. Creamer?

A Yes.

Q Then the last name on this is a carbon copy shown to Dr. Seligman; correct?

A Correct.

Q At the orientation programs that you participated in, what was the policy about having someone going around the room after or during those programs to collect meeting notes and materials?

MR. ALLEN: I would object. I'm going to permit the witness to answer. But I think that was covered last Wednesday on the first day of the deposition when there was an inquiry made to the witness about whether at meetings there was someone collecting documents for destruction or for some other purpose. He answered the question at that time.

A Well, this is a completely different

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orientation. What this is is when people came aboard in those days, they would visit these particular project leaders, for instance, at a time frame. That 9 to 11 means the time.

MR. ALLEN: The question was, was there anybody going around at these meetings to collect documents.

A As I'm saying, the meeting was an individual meeting between, for instance, myself and Henry Secor on Wednesday, the 7th, from 9:00 to 11:00. He and I sat across my desk, table, or something and discussed --

Q It wasn't a collective meeting of individuals?

A That is correct.

Q It was just, for example, 9:00 or 11:00 on April 7th was yourself, Mr. Tamol, and an individual by the name of Henry Secor who was evidently a recent hiree of Philip Morris?

A That's correct.

Q Were there meetings at which some individual was designated in Philip Morris to pick up the documents that had been distributed or the notes?

MR. DELACROIX: Object to the form of the question.

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MR. ALLEN: I'll object to the form, too, to the extent that inquires of the witness' understanding of Philip Morris' document destruction policy, I put that in quotes, it's a permissible inquiry. I don't mind him responding on that basis.

I think the way it has been phrased it doesn't limit itself as it should under Judge Magistrate Chasez's order.

THE WITNESS: Should I answer the question?

MR. ALLEN: Go ahead.

A I don't recall ever going to a meeting at Philip Morris where any of the papers that were distributed were picked up after the meeting. I have gone to hundreds, if not thousands, of meetings over this period of time.

Q Or meeting notes, that is, notes made by individuals at meeting?

A Or meeting notes or whatever.

Q Would you look at the next document in RAT-16 --

MR. ALLEN: Russ, let me interrupt for one moment. Do you have a Bates number?

MR. RUSS HERMAN: No, I don't.

MR. ALLEN: Is mine just covered up by the

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exhibit sticker? That's not numbered, the one that we just discussed?

MR. RUSS HERMAN: It is not numbered.

Q The next thing I would like you to look at is a Philip Morris Inc. Research Center document dated April 5, 1963, bearing Bates stamp numbers 26083 through 26110.

MR. ALLEN: Mr. Herman, the numbers 26083 -- excuse me, 26083 through 26110 would appear to suggest that the report entitled apparently "Literature Investigation of Extensible Paper Making Processes" ends with page 2. I'm asking --

MR. RUSS HERMAN: Tell you what, let's go by -- One of the reasons I want to ask questions about this, I don't understand the sequencing. Let me -- Let's start with page 26083 of RAT-16.

Q Is the handwriting on that page, the cover page, yours?

A I think the "F. C. Vaughan" is, but the comment to the right and the "H. Wakeham" is not mine.

Q Was this a -- "Literature Investigation of Extensible Paper Making Process" that you were working on in the research center in April of '63, 1963?

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A You can't say I was working on this. I was proposing this as a method of modifying paper at the time, but it was -- It's a rough draft to me of this summary report.

Q Let's turn to the next page, 26084. Second paragraph says that "The purpose of the investigation was to determine if it would be feasible to adapt an extensible paper making process to the RTPM," capital RTPM, "operation to manufacture a product with physical properties to equal or exceed those of natural leaf."

RTPM means reconstituted tobacco by paper making methods?

A I think it does. That's what we were doing at the time. So that's probably what it stands for. It's been so long, I can't recall.

Q At any time in trying to identify what acronyms or abbreviations mean, if you want to have reference to Exhibit 9, which has already been introduced, we'll get another copy of that out for you. You can just keep it next to you.

Now, the next page I have is 26085. Are the editing notes on this page and handwriting yours?

A I think the "more" is my handwriting. "Reviewed" doesn't look to be my handwriting.

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Q Do you know whose handwriting that is?
A I have no idea.
Q The next page is 26086; correct?
A Yes.
Q Do pages 26086, 087, 088, 089, 090, 091, 092, 093, 095 go together? Are they supposed to be part of this rough draft?
A 4 is in here, also. They look like they go together, yes.
Q When you say there is 4, 4 what?
A You left out 294 -- 094, I thought.
Q Thank you. I appreciate you pointing that out. In other words, pages 26084 through 26095 are part of this Literature Investigation rough draft?
A Yes, they are.
Q Now, let's turn to 26096. Do you know whose handwriting this is?
A No, I don't.
Q At the top it says "See" and then there are some initials. Do you know to who those initials refer?
A No. It looks like HJ, but I don't know.
Q Now, if you look at pages 2609 -- Strike that.
26097 through 26103 appears to be a

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document stamped -- Strike that.

Let's just start with 26097. It bears your stamp of April 4, 1963?

A Yes, it does.

Q This is in your handwriting; is that correct?

A Yes, it is.

Q This relates to the Literature Investigation?

A Yes, it does.

Q 26098 is stamped March 18, 1963. Does it relate, that is, does page number 26098 relate to the Literature Investigation?

A Yes, it does.

Q The next page is 26099, and there are handwritten notes of yours that proceed through 26108, that is, 26099 to 26108. Am I correct that this is all your handwriting?

A Yes, it is.

Q Do these notes relate to your investigation of extensible paper making processes?

A Yes, they are.

Q And then there are some printed pages that run 26109 -- printed or typed 26109 through 26118. Do these documents relate to the extensible paper making

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processes?

A No, they don't. It looks like it's on expanded stems.

Q Thank you.

MR. RUSS HERMAN: We'll remove from the "Literature Investigation of Extensible Paper Making Processes" pages 26109 to 16118.

We will ask all counsel to please hold onto the removed pages. We'll be getting to those sometime this afternoon.

MR. CLINARD: Mr. Herman, what was the status of 26096?

MR. RUSS HERMAN: We'll remove also 26096 from this exhibit.

Q Am I correct that RAT-16, the documents that now are attached, form part of the "Literature Investigation of Extensible Paper Making Processes"?

A Yes, they are.

MR. RUSS HERMAN: Just so we can for identification purposes have this marked, we're going to mark this as RAT-16A.

MR. ALLEN: The ones that we removed?

MR. RUSS HERMAN: No.

MR. ALLEN: The ones that remain?

MR. RUSS HERMAN: The ones that remain.

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Q The next document in RAT Exhibit 16 is titled "Research at Philip Morris Incorporated." It begins with Bates number 26,500 through 26,527. Are you familiar with that, sir?

A Yes, I am. Now that I have read it, I am.

Q Had you seen it before or read the cover in the original?

A I probably did. That dates way back to the '60s, I believe.

Q Would you look at the next document in Exhibit 16, it's marked 24315. It should be the next document in the series.

A These are 28s and 6s. Here it is right here.

MR. ALLEN: 24315? Got it.

Q This is a -- 24315 is from Ralph E. Antell to All Research Center Employees dated January 4, 1965. Is this the communication, to the best of your knowledge, that transmitted the research at -- Philip Morris Incorporated document that begins with the number 26,500?

A Yes, to the best of my knowledge.

MR. RUSS HERMAN: We're going to attach the document 24315, the letter from Mr. Antell dated January 4, 1965, to the document labeled 26,500.

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For purposes of identification, label it 16B.

MR. CLINARD: What is the last page of 26,500 for the record?

MR. RUSS HERMAN: 26,527.

MR. ALLEN: We're labeling this what? B or C?

MR. DELACROIX: B.

MR. RUSS HERMAN: Just so the record is clear, RAT-16B is document 24315 dated January 4, 1965, in the research department booklet, which is 26,500 through 26,527.

Q Now, the next document in Exhibit 16 begins with the date January 12, 1965. Is this in your handwriting, sir?

A What is the number on it?

MR. DELACROIX: What is the Bates number?

Q 2880.

MR. ALLEN: The date stamp appears to have that date. It's a different date written on it.

MR. RUSS HERMAN: Let me ask you questions about it.

Q I'm showing you a document that begins 2880 and ends on 2884. If you go through each of these pages, is there your name stamp, "R. A. Tamol," and the date, "January 12, 1965"?

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A Yes, there are.
Q Is this document in your own handwriting?
A Yes, it is.
Q Would you read, beginning with the word "review" at the top right, the document numbered 2880.
A "Review of Thomson's project and Deszyck and Cornell. 1964. January '64. Project 2100.
"(1) Series T-cellulose acetate dual filters" looks like "cigarette promised field test. Low tar. TPM? 17. Tar 7.8, Snel method. (2)" --
Q That's Snel, S-n-e-l?
A I believe so, the way I would read it. I don't know what it means. That's the way I read it.
"(2) Extruded cellulose filter?
"(3) Carbon paper taste?
"1402. Cornell.
"(B) Saratoga flavor formulations.
"0706. Deszyck.
"(1) Subjective evaluation of peaks. What about lactones?"
Q This is the page 2880. Where it says project "2100," I'm asking this question as background information, project 2100 was some project that you worked on in research and development or some project you reviewed but did not work on?

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MR. ALLEN: I'm going to allow him to answer it. For the record, I do want to object, because I think the order which permits inquiries into his background, while it certainly would allow to go into his education, his training, where he went to school, where he was employed, et cetera, was not designed as a vehicle that would permit you to ask substantive questions about particular projects that he participated in as an employee of Philip Morris.

Having said that for the record, the fact I might permit the answer -- the witness to answer this question shouldn't be considered a waiver of a similar objection if we go down this road very far.

MR. DELACROIX: I join in the objection, too, Mr. Herman. I think this question can be answered.

A I would guess that was Dick Thomson's project, probably filter development 2100, because he's above there.

No, I never worked in that project at all.

Q As we go through Exhibit 16, just so the record is clear, when we see project followed by a number, it means a particular research and development

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project somebody at Philip Morris was working on; is that correct?

A Yes, it does.

Q Where the numbers "1402 Cornell" appear on page 2880, is that a project number?

A Yes, it was at that time.

Q Where the letters or numerals "0706" D-e-s-z-y-c-k, Deszyck, was that a Philip Morris project?

A Yes, it was at that time.

Q If we go to the next page, 2881, is this in your handwriting?

A Yes, it is.

Q Would you read the handwriting on this page.

A "February. 2100. (1) Field tests, Marlboro, Parliament.

"(2) Polyox for HCN.

"1402. (1) Effective nicotine on TFP smoke?" I believe that's smoke.

"(2) Saratoga - filler and filter plug. Added nicotine malate to TFP. Treated charcoal granules. Ethyl maltol.

"0706. Compound 180 - 2 parts per million on bright tobacco? Single lactones?" Three stars

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"cigarette paper smoke," underlined.

"266, molecular weight. Lactones" underlined.

Q Would you turn to the next page, 2882. Is this in your handwriting?

A Yes, it is.

Q It has your date stamp on it?

A Yes, it does.

Q Would you read it to us, please.

A "March. 2100. (1) Series 'T' field test" --

Q Excuse me, the numeral in the upper left-hand -- First of all, at the top there is "March" abbreviated?

A Yes.

Q Then below that there is a project number?

A Yes, it is.

Q That's 2100?

A I would say so, yes.

Q Would you read it to us?

A "(1) Series T field test - supplier change spec? Data correlation plots. Alpha cellulose filter material. Plugmaker, assembler." Star "Series T plus" -- might be "acetate on Parliament - found harsher.

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"2. Carbon filters. Synthetic Gas removal of 52. Nuchar" -- I don't know what that is, something "on carbon. American tobacco," I can't read that word "on what carbon?

"1402, Lecithin as a sheet plasticizer. Mechanism of nicotine delivery? Encourage flavor results" -- I don't know. That may be "encourage." I can't read it. -- "flavor results for Saratoga.

"0706. Nicotine level in filters. Special judges."

Q Now, on page 2883, that is in your handwriting, also?

A Yes, it is.

Q Do you see under project 1402 on that page the words "Upjohn" and "Pfizer"?

A Yes.

Q What is the word after Pfizer?

A It would be "material," abbreviation for "material."

Q Would you read the next line to me?

A I don't know the first word, and "ethyl maltol," I guess, "- Venezuelan Marlboro."

Q Would you read what is next to the numerals, the project, is that project 0706?

A Yes, it is. "Bright tobacco" and might be

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"extraction." I can't make it out.

Q Turn to the next page 2884. Do you see under project 1402 on that page?

A Yes, I do.

Q What are the written words under that?

A That would be "water soluble flavor for TFP."

Q TFP is what?

A Tobacco formulated product. That was the paper from stem.

Q Tobacco formulated product?

A By paper making technique.

Q That related to the earlier paper in this exhibit; is that right?

A Yes.

Q When I say paper, I better clarify.

A The process of taking a stem and making a tobacco paper out of it.

Q Then the next project number on the page is 2100; is that correct?

A Yes, it is.

Q We're speaking about page 2884 of RAT-16; correct?

A Yes.

Q Would you read for me the words that appear

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under project 2100.

A "Parliament with series 'T'. Low in tar. High in nicotine" looks like "any phenol. Bypass? Still occurring."

MR. RUSS HERMAN: For purposes of the deposition, the documents that you have just identified or read for us, 2880 to 2884, we're going to designate as RAT Exhibit 16C.

Q We have already looked at the next series of documents in Exhibit 16 once today in connection with some other questions.

It begins with a letter of January 18, 1965, where you're transferred from the by-product division to the brand development or project. Do you see that, sir?

A 227?

Q Yes, 26227?

A Yes, I do.

Q On January 18, 1965, as we said before, you were transferred from the by-product development division to the brand development project?

A That's correct.

Q Paragraph 3, Mr. Tamol, indicates that you were currently conducting the continuous conversion of sheet material into cigarette filler.

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Does that letter relate to the extensible paper making process, or is this something different?

MR. ALLEN: I'm going to let him answer this. We're getting into the substance that the Magistrate Judge Chasez specifically ordered not -- shall not be inquired into.

While I will waive it with respect to this one question, I just want you to know you shouldn't be getting into the substance.

Go ahead and answer that one.

MR. GAY: We join in the objection.

A It seems, to qualify this a little bit, your answer -- or your question regarding extensible paper, extensible paper was a proposal. It was a physical technique of changing the characteristics of paper, for instance, that was used in bag-making that you would stretch.

We never worked -- We never -- That was never incorporated into the system. But the tobacco by paper making techniques for reconstituted tobacco was an ongoing project and went to fruition.

So what this continuous conversion was using sheet material from that paper making process.

Q Would you look at document 2875 through 27877.

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A Okay.

Q Is this written in your own handwriting?

A Yes, it is.

Q It's titled -- Excuse me. It has your stamp on it, your name and date stamp?

A Yes, it does.

Q It's date stamped January 18, 1965?

A Yes, it does.

Q Would you read for us --

A "Brand development presentation outline. (1) Purpose" -- I can't make that out, something "qualifying. (A)" Might be "Marlboro. (B) Cost savings. (C) Buffer. (D) New brands - crimped filler" something "of long par."

Above it there is two columns: "Domestic, Oversea." And then there is "presentation" something, something. I can't make that out.

Q What does the word "par," p-a-r, "a long par," what does that mean?

MR. ALLEN: Objection. That is an inquiry into the substance of the document.

Q Is that an abbreviation of something, "par"?

A That was a plastic filter development, as I recall. That was just the name they gave it.

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Maybe par stood for partition. It was a two-section plastic filter. Maybe that's what it stood for. I don't know.

Q Would you continue reading.

A "Potential cigarette types. (1) Filter, long" to the side. "Flavor. (3) Health. (4) Aroma. (5) Low tar and nicotine. (6) Higher percent TFP cigarette reconstituted," two arrows, "flavor." I don't know if it's "structural sales point." I don't know for sure what that means. I can't make that out. It's just a guess.

Q Do you see to the right of the six subcategories you just read there is a numeral and designation of a letter "2B"?

A Yes. It says "Detailed objections." I can't read it. It's a guess, again, on my part.

Q Would you read for us paragraph 3 on page 2875.

A "Anatomy of a cigarette" underlined. "Brand - RTD effort. (1) RTD. (2) Flavor. (3) Filter. (4) Side stream. (5) Filler saving. Point: Basis for" might be "application will be subjective evaluation of the market or economics. (Market research type of results.)

"(4) Basic questions to be answered for

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True brand development. (3) What RTD is desired? i.e, Australian RTD problem. (2) What side stream? Ratio device is half and half" -- I can't read that "due to pipe smoker," and then something -- On my copy it's cut off.

Q RTD means resistance to draw?

A That's correct.

Q Would you read for us the -- your handwriting on 2876.

A Yes. That's my handwriting.

Q It's also dated January 18, 1965?

A That's correct.

Q Would you read those words, please.

A "What is difference among filter, unfiltered - charcoal flavor? (4) What are advertising limitations? I.e., can series 'T' Dupont no longer be used. (5)" is blank. Nothing after that.

Then in the middle of the page it has "Program." Off to the side must be "priority." Under "Program" is "basic brand development. (1) Smoke flavor - ratio device. (2) Side stream device. (3) RTD investigation device. (4) Filter configuration.

"(2) Pick up existing programs." I can't read -- I'm trying to read that to the left.

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Q The words under "Program" subparagraph 1 under "basic brand development," there are some words on the left? Can you read that for us?

A Something "flavored paper." I can't read the first two words. Then "i.e.," it looks like that to be something regarding "TPM," and then I can't read the other word, "gas phase."

Q TPM meaning total particulate matter?

A Total particulate matter; right.

To the right "Priorities," I guess. "Aimed at existing brands (1) Low tar and nicotine cigarette. (2) Side stream cigarette. (3) RTD reduction."

Back under "Program" left of the page "(4) Crimped filler and other. (5) Paxton flavor - Joe Sherr. (6) Buckeye. (7) Series 'T'. (8) Crimped filler."

Q Joe Sherr, that's S-h-e-r-r?

A That's right.

Q Was he a Philip Morris employee?

A Yes, he was.

Q If you would turn to the next page, 2877. Is that in your handwriting?

A Yes, it is.

Q Could you read what is written there.

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A It doesn't have a stamp on it, a date, but it is my handwriting. It looks like "Possible major brand changes for PM. (1) Major flavor breakthrough - across the board brand change. (2) Innovative change - long par, crimped filler, (box won't do it all" along -- "all alone," rather, "i.e., Marlboro," I don't know, "experiment," I'm not sure. (3) Change dictated by impact of surgeon general's report."

Q That's "change dictated"?

A It should be dictated, yeah. I left out the "c." That's the only word I could put in there.

Q If you would look next at document 2736 dated April 14, 1965.

A Yes, I have got it.

Q Is that signed by you, sir, at the bottom?

A Yes, it is.

Q In your handwriting; correct?

A Yes, it is.

Q It is going to Mr. or Dr. F. E. R-e-s-n-i-k; correct?

A It's R. N. Saleeby. He's not a doctor. Just R. N. Saleeby.

Q No, sir. At the top of the page, it says, "To F. E. R-e-s-n-i-k"; is that correct?

A Resnik, that's right.

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Q Then it also goes to R. N. Saleeby; correct?

A Correct.

Q The subject matter reads "Pinnacle cigarette B-a-P delivery"; correct?

A That's correct.

Q What is BaP?

MR. ALLEN: Objection.

Q Capital B, capital (sic) a, capital P, what does it mean?

MR. ALLEN: Objection. The question asks the witness to discuss the contents of the document, which the judge has specifically ordered not being inquired into. For that reason, I object and instruct the witness not to answer.

Q Is BaP an abbreviation or acronym?

MR. ALLEN: Same objection.

Q Isn't BaP, according to document number -- "Exhibit Number RAT-9, Benzo a Pyrene?

MR. DELACROIX: Object to the form of the question. I think the document you're referring to speaks for itself.

MR. ALLEN: Same objection.

MR. RUSS HERMAN: I think I'm entitled, as

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the magistrate said, to find out what these abbreviations and acronyms used in this document mean. If it doesn't mean Benzo, B-e-n-z-o, small a, new word, P-y-r-e-n-e, I think I'm entitled to know that.

MR. ALLEN: For the record, again, I'm holding Magistrate Judge Chasez's order of May 24 in which she says, and I quote, "The deponents may be asked to identify particular documents, to provide information on the chain of custody of said documents and to clarify handwritten notations on the documents that are illegible. However, the substance of the information contained within the document shall not be inquired into."

I'm going to waive the objection for your question regarding B-a-P, if the witness knows it. I don't have any objection to your asking him on that matter.

I think the judge is very clear that the substance cannot be inquired into, and he can only be asked to clarify illegible handwritten notations.

With that said, go ahead.

A It's been a long time. We always referred

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to it as Benz Pyrene. That's what we call it, Benz Pyrene.

Q Would you read your handwriting on document 2736, please.

A "According to Lou Weissbecker, casing tobacco should reduce BaP delivery. The new American Tobacco Pinnacle brand appears to be heavily coated with sugars. I suggest that a BaP determination of this cigarette be run and compared with our brands. This may be their attempt at a low BaP cigarette."

Q Was Mr. Lou Weissbecker an employee of Philip Morris in research and development?

A Yes, he was.

Q We have looked at part of this document, the next document I'm going to ask you to identify, yesterday. It's dated -- "Presentation to: Millhiser, Goldsmith and Cullman," dated April 27 and 28, 1965, from Thomson, Carr, Meyer and Tamol. It has Bates stamps 2737 through 2751.

Are you able to look through this document or these pages and tell us which material in here you were responsible for?

A I would say I was responsible for page 2752.

Q I may have misstated. This document I have

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handed you is page 2737 through 2752. Would you look at page 2746 of this April 27, 28, 1965 presentation and tell me whether that page is correctly sequenced, to the best of your recollection and information, with pages 2744 and 2745.

A I would say so. It has got page 1, page 2 and page 3.

Q So that this would have been part of Mr. L. F. Meyer's presentation?

A Yes, that's the way I read it.

MR. RUSS HERMAN: Just so we can further identify this document, the presentation of April 27 and 28, 1965, Bates 2737 and 2752, we'll mark that as 16-D.

Q Going further with Exhibit 16, there is a document dated May 19, 1965, Bates number 2856. Is this a Philip Morris document?

A It looks to be a Philip Morris document.

Q Do you know whose initials are there?

A At the bottom of the page?

Q Yes, sir.

A I would assume they are W. L. Dunn, Jr.

Q What was Mr. Dunn's position with research and development as of May 1965?

A I don't recall, really. He was in a staff

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position, let me put it that way. I don't know what his title was. I don't remember, anyway.

Q Why -- Were you involved in the subject of -- any of the subjects of this communication authored by W. L. Dunn, Jr.?

A No, I was not involved with the Paxton cigarette.

Q It has your name in the upper right-hand corner. Do you know how or why you received it?

A It's not my handwriting. Somebody must have written it and sent it along to me.

Q Are all the individuals listed on this document 2756, were they Philip Morris employees at the time, to the best of your knowledge?

A All except Super. I don't remember who he was. He might have been a technician or something. I don't remember him. The rest were.

Q What is the next Bates number that you have after that, sir?

A 2096.

Q Do you know whose handwriting that is on 2096, a document dated July 16, 1965?

A I don't know for sure, but it's under -- where it says "William L. Dunn, desk of William L. Dunn," and his initials are on the bottom, which sort

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of look like the initials of 2856, so I have to assume it's Bill Dunn's handwriting.

Q It is written to you?

A Yes, it is.

Q What was Mr. Dunn's position at that time?

A Again, you just asked me that. I know he was in a staff position, but I don't really recall what it was. It's been a long time.

Q Do you see --

A Maybe it wasn't a staff. I really can't recall. Don't quote me on that.

Q Under paragraph 1, do you see something that says, "A recent Roper survey yielded results"?

A Yes.

Q Was the Roper survey provided to you in connection with your duties and responsibilities at Philip Morris?

A I don't know on a continuing basis. I know I have seen several of them, at least one, but I don't remember.

Q It goes on to say that "A recent Roper survey yielded results which Jet has interpreted." Does that refer to Mr. Jet Lincoln?

MR. ALLEN: I object. We're getting into questions that go to the content and substance

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or what is contained in the document as opposed to deciphering illegible handwriting.

To that extent, we're in violation of the judge's order.

MR. DELACROIX: Same objection, Mr. Herman. I think we are starting to broach into the area of content of documents.

MR. RUSS HERMAN: I think I'm entitled to identify individuals mentioned in these documents within which the magistrate has ruled.

MR. DELACROIX: I think this witness has testified this is not his handwriting. He assumes it's the handwriting of someone else, he's not really sure.

Now he's being asked to identify someone else's handwriting and a reference made by that person. I think that's -- from that standpoint, that's improper, also.

Q Do you have any doubt in your mind that Mr. Dunn wrote this note to you, Mr. Tamol?

MR. ALLEN: Objection to the form of the question, because it asks --

Q To the best of your knowledge, Mr. Tamol, is your name R-o-n, new word, T-a-m-o-l?

MR. COPLEY: Object to form.

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MR. ALLEN: Object. It's asked and answered.

Q I would like you to answer my question.

A Yes, that's my name.

Q This note is also dated July 16, 1965; is that correct?

A Yes, it is.

Q It says, printed on it "From the desk of William L. Dunn;" is that correct?

A That's right. I already said that it was from the desk of William L. Dunn.

MR. DELACROIX: I object.

MR. GAY: I object. This document speaks for itself. You're just proving the obvious here.

MR. ALLEN: Which part do you find illegible?

Q I will ask you again, this note having been written to you by a Philip Morris -- Strike that.

Mr. Dunn was your senior at Philip Morris, was he not, at the time this was written?

MR. ALLEN: Objection. You have asked the witness twice who Mr. Dunn was and what his position was at Philip Morris, and twice he has answered that he doesn't recall.

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MR. RUSS HERMAN: That's not my question now.

Q My question now is: Was William L. Dunn senior to you at Philip Morris at the time that document 2906 was written?

A What do you mean by senior?

Q Had he been there longer than you?

A Yes, he had.

Q Was he in a supervisory position greater than yours at the time this was written?

A I don't know. I'm not sure, because Bill has had supervisory positions, and he also has had staff positions. I don't recall what he was at this point in time.

Q I will ask you again if the word Jet, J-e-t, refers to another Philip Morris employee, Jet Lincoln?

A I would guess that. That's the only Jet that I knew of or ever heard of.

Q I'm going to show you a document dated February 22, 1965, which I asked you to look at earlier in your deposition, page 2819. At the top it says, "Questions of Jet Lincoln."

MR. ALLEN: Excuse me, Mr. Herman, is this in RAT-16?

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MR. RUSS HERMAN: If you will let me finish my question. I would like to finish it.

MR. ALLEN: I thought you were finished. excuse me, go right ahead. I do want you to finish.

MR. RUSS HERMAN: No, sir, I wasn't.

Q I'm going to show you exhibit -- page 2819, dated February 22, 1965, which I asked you about earlier regarding and forming part of Exhibit 11. You see at the top it says, "Question of Jet Lincoln"?

A Yes.

Q Is that question or questions?

A Questions, plural.

Q What is the last thing on the list there, would you read that?

A "Nicotine to keep a man hooked." I already answered that.

Q Does this correspondence of July 16, 1965, which is part of RAT-16, have anything to do with that question or Mr. Jet Lincoln's concern or your concern about how much nicotine required to keep a person hooked?

MR. ALLEN: Objection. That question certainly goes to content and substance of the documents and is in violation of the permissible

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scope of the deposition as ordered by Magistrate Judge Chasez.

I will instruct the witness not to answer.

MR. COPLEY: Objection to form.

MR. DELACROIX: We likewise object. I think that's clearly outside the parameters of the judge's orders, and you're asking him questions regarding substance of the documents. It's improper at this deposition.

Q Insofar as the sequencing of documents, does the Jet Lincoln document in February relate to the Jet Lincoln document in July of 1965?

MR. ALLEN: Same objection. That goes to the substance.

MR. COPLEY: Object to form.

MR. GAY: Object, also. There is no indication that this is a Jet Lincoln document in July of 1965. That's a mischaracterization of the document.

MR. RUSS HERMAN: Your point is well taken, Counsel. Let me restate the question perhaps a little bit more articulate.

Q The February 22, 1965 document that refers to Jet Lincoln and how much nicotine it takes to hook somebody, and the July 1965 document that relates the

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word Jet, are those documents in any way related?

MR. ALLEN: Objection. It goes to -- It's a substantive question, albeit couched in the reference to sequencing. It inquires into the nature and the content of the document.

As such, the question violates the order of Magistrate Judge Chasez. For that reason, I instruct the witness not to answer the question.

MR. DELACROIX: We, likewise, object to the question, Mr. Herman, and move that the question be stricken from the record. It's outside the proper bounds of discovery in this deposition.

MR. COPLEY: I want to object to the form of the question.

Q Were there questions going back and forth between you and Mr. Jet Lincoln either directly or through others regarding how much nicotine it would take to keep somebody hooked?

MR. ALLEN: Same objection. Same instruction to the witness.

MR. DELACROIX: Object to the form of the question, move to strike your question, again, as it being outside the bounds of Judge Chasez's order.

Q When you used the word "hooked," were you

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using it in the same way that people talk about being hooked on cocaine?

MR. DELACROIX: Object to the form of the question. Again, move that the question be stricken as outside the bounds of proper discovery of this witness pursuant to Magistrate Judge Chasez's order.

MR. RUSS HERMAN: Are you instructing --

MR. ALLEN: Same objection.

MR. GAY: We will also object, because it asks a question that he can't possibly answer.

MR. RUSS HERMAN: Are you instructing him not to answer?

MR. ALLEN: Yes, I am.

Q Were you using that word "hooked" the same way people might say hooked on opium? Is that what you meant?

MR. DELACROIX: Object to the question. Mr. Herman, if we're going to continue along these lines of questions, asking substantive questions of this witness as to what the contents of documents are and what the meaning of words are, not handwritten words that he's already explained, but content and explanation of those words in this deposition, we're going

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to have to stop the deposition and get the judge on the phone, because this is clearly outside of the bounds of Judge Chasez's order dealing with the scope of this deposition.

MR. RUSS HERMAN: Are you directing the witness not to answer?

MR. DELACROIX: I'm not directing the witness not to answer at this time.

Q Didn't you tell Hatsy Heep that was one of the purposes of nicotine in cigarettes, was to keep people hooked and addicted?

MR. ALLEN: The witness may answer that question.

MR. BERTAUT: Object as to form.

THE WITNESS: Answer?

A No, I never told her that.

Q Did you ever use the word "hooked" to Hatsy Heep?

MR. ALLEN: You may answer.

A I never used the word "hooked" to Hatsy Heep.

Q Did you ever use the word "addiction" or "addicted" or "hooked" to Hatsy Heep in connection with the use of tobacco products and nicotine?

A It's a two-part question. Again, I

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answered I never used the word "hooked."

We may -- As I recall, I may have talked about her being my little addict with her drinking and smoking and coffee drinking. That is my -- the recollection that I have of that.

Q Do you think Hatsy Heep was telling the truth when she said that you told her in connection with her smoking she was an addict?

MR. ALLEN: Objection. The judge specifically said whether the statements attributed to Mr. Tamol by Ms. Heep are substantively true or not is not an area that may be inquired into.

The witness merely may be asked whether and under what circumstances he made statements attributed to him by Ms. Heep.

The question you just asked violates that directive from the judge, and, therefore, I will instruct the witness not to answer.

MR. BERTAUT: I also object as to form of that question.

Q Would you look at document 2862 of RAT-16, please.

MR. ALLEN: 2862?

MR. RUSS HERMAN: 2862.

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MR. ALLEN: What does it look like, Russ?

MR. RUSS HERMAN: It says at the top "Presentation outline."

MR. ALLEN: Is it the top page of a group of documents stapled together?

MR. RUSS HERMAN: "Presentation outline" is the first two words on page 2862 in the upper right-hand corner. It's marked page A, page 2863 is marked B, and page 2864 is ranked C.

Q Is this in your handwriting, sir?

A Yes, it is.

Q Is this a document that you wrote as part of your job at Philip Morris while you were employed there, sir?

A It looks like it was, yes.

Q Would you read to us the words on page 2862.

A "Presentation outline. Thoughts of goals and program of brand development" something.

"(A) Introduction. (1) Purpose - marketing plus production both domestic and international. (2) Line of communication. (3) Techniques used for presentation of proposals. (4) Handle New York requests" -- something "to minimum if we" -- I can't make that out, "total" something. I

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can't make out just about that whole sentence. It's not clear.

"(B) Anatomy of a cigarette. (1) Components.

"(B) Possible major brand changes for PM. (1) Flavor. (2) Innovation. (3) Surgeon general report - government pressure.

"(D) Some disturbing questions regarding cigarette brands. 1 to 7." The questions aren't there.

(E) Observations of a few types of cigarette. (1) Health. (2) Tar" something, maybe. I can't read that. "(3) Presents sales growth" maybe might be "chart."

Q Do you know if page 2862, the original, was returned to you by the FBI?

A No, I don't.

MR. RUSS HERMAN: I'm going to make a note for purposes of the deposition in our records, since there are some notations on here that you can't read, when we resume your deposition, that we ask the FBI produce the original, and we'll also issue a separate subpoena to you to produce the originals. So we make sure that somebody has got it here.

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I will also note that you can't read the date on the date stamp in the upper right-hand corner.

Q Would you tell me, for example, it says, "Handle New York requests"?

A Yes.

Q Does that refer to Philip Morris in New York?

A That's the way I read it.

Q Would you look at the next page, 2863, and can you read those words to me.

A "(F) Proposed structure of brand development project. Short range" something "appli-type. (1) Menthol" something. "(2) Filter" I can't make that out. "(3) Low RTD cigarette."

Arrow to the next box would be -- probably looks like "basic investigation." Under it "crimped filler" under it "other.

"(G) Possible basic brand" I'm not sure, maybe "development areas." Then "chart" underlined.

"(H) Devices to" something "basic investigations. (A) Side stream aroma" and something. "(B) RTD test. (C) Program cigarette" - instrument -- "investigate," rather, "ratio of TPM to gas phase plus dilution."

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There's "schematic" and "curves" and "prepare from E.

"(I) Review of major points." Star "(A) Tar derby will be on again - health cigarette not" --

Q Is that tar, T-a-r, derby, D-e-r-b-y?

A That is right. "Health cigarette not saleable in near future. A major effort here. (B) Basic investigation tools required - side stream," I guess, "programmable smoke with" subjective -- "subject on" something. I can't read that last word or "in" -- with "subject" period. I can't read the last two words.

Q Would you read 2864 for us.

A "(J) Conclusions - priority ranking. Program. (1) Pick up existing short range development. (A) Menthol in Paxton. (B) Flavor in multifilter. (2) Concurrently embark on basic program."

Q Then there is something scratched out?

A All scratched out. I can't make any of that out.

Q You can't make that out?

A No. "(3)" something.

Q Do you see under subparagraph 1 under "Program," what are the three letters at the end of

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that first line?

A It looks like "d-e-v." It looks like "development," "short range development." I think I said "development." That's how I would read it.

MR. RUSS HERMAN: Again, we're going to ask that you, as well as the FBI, produce the originals of 2862, 2863 and 2864 when we come back. We'll just give these three pages a sub-exhibit number, RAT-16E.

The court reporter or videographer has passed me a note that we're almost out of tape. Why don't we take a 15-minute break.

THE VIDEOGRAPHER: We're going off at approximately 3:00 to change tapes.

(Recess taken from 3:00 to 3:21 p.m.)

THE VIDEOGRAPHER: We are back on the record for the beginning of tape 7 at approximately 3:21.

Q The next document is 22727. I only have the first page of it. It says "Program for 1966 project 4008."

MR. DELACROIX: What was that number again, Russ?

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MR. RUSS HERMAN: 22727. It looks like this.

MR. ALLEN: We haven't gone over it already, have we?

Q Do you have the document?

Let's look now at RAT-16, a document entitled "Research Library Bulletin, October 1965."

MR. GAY: Are you going to another document?

MR. RUSS HERMAN: Yes, I am.

MR. ALLEN: The number again is?

MR. RUSS HERMAN: 24599 through 24630. The last page is Bates stamped 2458.

MR. ALLEN: 24599; right?

THE WITNESS: We don't have that.

MR. RUSS HERMAN: Let's go off the record.

THE VIDEOGRAPHER: We're off the record at approximately 3:26.

(Off the record.)

THE VIDEOGRAPHER: We are back on the record at approximately 3:27.

Q The next document I will identify as RAT-16F. Its Bates stamped 3383 to 3384 from

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Mr. Tamol to Mr. Seligman dated March 15, 1966.

MR. GAY: Does yours say from or to?

MR. RUSS HERMAN: Yes. The bottom line reads -- The bottom line at the top reads "R. A. Tamol." The top line at the top reads "R. B. Seligman."

MR. GAY: You said from and to?

MR. RUSS HERMAN: Yes, I did.

Q Document 3383 has your name below Mr. Seligman. Does this generally indicate on Philip Morris documents that you would be the sender and he would be the recipient?

A Yes.

Q It's marked "Received" by "Mr. R. N. Thomson"?

A Yes. That's what I see.

Q On the second page, whose signature is that?

A I can just about make it out. It looks like mine.

Q This is an idea for more cigarettes per package suggested by you in connection with the work at Philip Morris Research and Development; correct?

A Let me read this a minute; all right?

Q Sure.

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A Based on the first paragraph and recall, I don't believe this was an original idea with me. It must have been this tobacco products committee that recommended it.

Q Was this some research and development document that you helped come up with and authored in connection with the number of cigarettes per package?

A Yes, that's what I read.

Q In the upper right-hand corner it says, "File." Would you read that?

A It looks like "4008" and "5000."

Q Would those be project numbers?

A I would assume they are.

MR. RUSS HERMAN: RAT-16G.

There are a series of documents Bates stamped 26249, 26250, 26251 through 26256, and appended to it are Bates stamped pages 26257 through 26263. The upper right-hand corner is marked -- of RAT-16G is marked "Confidential," August 9, 1966, has Mr. Tamol's name and Mr. Seligman's name.

Q Does this appear to be a document -- Strike that.

Is this a Philip Morris document signed by you on page 26256, sir?

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A Yes, it is.
Q And you show carbon copies to Dr. Wakeham, Mr. Thomson, Mr. Resnik, Dr. Eichorn and Dr. Dunn, and project 4008?
A Yes, it does.
Q Who was Dr. Wakeham at the time?
A Wakeham was vice-president of research and development.
Q Who was Mr. Thomson at the time?
A '66, I assume he was a project leader.
Q Who (sic) was Mr. Resnik's job at the time?
A I think he may have been a manager.
Q What was Dr. Eichorn's job at the time?
A I think he always had a staff position.
Q Dr. W. L. Dunn, Jr.?
A I don't know. Either a staff position or a line position. I don't know that.
Q Was this paper authored by you in connection with your job --
A Yes, it was.
Q -- at Philip Morris, and it relates to ability to obtain consumer test results?
A That's the way I read it from the title.
Q The documents that are appended from 26257 to page 26263, are those -- are those documents -- do

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they belong with Exhibit RAT-16G?

A Yes, they do.

Q Next document is entitled Meeting -- is titled "M-T-G with Jet," J-e-t. Tamol, April 20, 1966, reads the date stamp. It's Bates number 26466. Do you have that, sir?

A Yes, I do.

Q Is this your handwriting?

A Yes, it is.

Q Would you read the words on it, please.

A Let me back off. I look at it from the side, it doesn't look like my writing with these diagrams, but the top writing is mine. "Meeting with Jet. (1) Impressed with" --

Q Let me interrupt you. I apologize to you. Only read me the words on this document 26466 that you wrote.

A Right. That's the "Meeting with Jet. (1) Impressed with Phoenix response (question more puffs" looks like "introduction" or -- it looks like an "N" is missing. "(2) Likes will buy type of marketing testing." "Likes will buy type of market testing." Then I have circled "Meeting with Lincoln."

Q The words "Jet" and "Lincoln" on this page refer to the individual at Philip Morris known as Jet

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Lincoln?

A Yes, they do.

Q The diagrams at the bottom of the page are not yours?

A No, they're not. That's not my handwriting.

Q Do you know who wrote the words "clearly more puffs, marginally more puffs, same puffs"? Do you know who wrote those words?

A No, I don't.

Q The next document is document 26468 dated April 20, 1966, and the first word I can read on the top says "Marlboro."

A That's not my writing.

Q This document was not written by you?

A At the bottom of the page is my writing "Replace filler with filter. True?"

Q Does "True" refer to a brand name?

A I have no idea.

Q It has your date stamp on it; correct?

A Yes, it does.

Q April 20, 1966?

A Yes.

Q Correct?

A Yes, it does.

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Q The next document is 26470 dated 5/6/66. Is any of the writing here yours?

A The bottom notation is. It says, "Costs from Taltz."

Q What is a Taltz?

A Taltz is a guy. Now that I have read it. I haven't seen that name for years and years and years. I think he was in economics or something of that sort. He had a staff position.

Q At Philip Morris?

A At Philip Morris.

Q The next document is 26469. Upper right-hand corner has "R. A. Tamol, May 9, 1966"?

A That's right.

Q Is this in your handwriting?

A Yes, it is.

Q Would you just read the top four lines for me, please.

A "Economic cigarette. Raw material costs reference R. Taltz. Tobacco. Delta rod" must be "PM cost per thousand per -- I don't know what that is, "milli" maybe. I don't know. "Equals $0.259 (A). Delta filter PM cost per thousand per" -- it might be "MM equals 0.0090" and (B)."

Q The word before "cost" are the initials.

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Is that RM or PM?

A It looks like an "R" to me. I couldn't decipher RM, so I read it as PM. I don't know what RM would mean.

Q What would PM mean?

A Philip Morris.

Q To the right are four diagrams that look like cigarette diagrams. There are two words. Do you see those words?

A Yes.

Q What are those words?

A One would be "Commander," and two would be -- Top one is "Commander." The bottom one is "Marlboro."

Q Those are brands?

A Those are brands.

Q The next document is 2728 marked "Confidential, Philip Morris Incorporated, Inter-office correspondence," October 26, 1966, signed by O-s-m-a-l-o-v, J. S. Osmalov?

A Osmalov.

Q Osmalov? Copy to R. N. Thomson, T-h-o-m-s-o-n; right?

A Yes.

Q It shows that it was written to you,

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Mr. Tamol?

A Yes, it was.

Q You see the words "John Wilson"?

A Yes, I do.

Q Whose handwriting is that?

A It looks to be my handwriting.

Q This relates to the delayed dilution cigarette project; is that correct?

MR. ALLEN: Give us a minute to read the document.

A Yes.

Q Have you reviewed that, sir?

A Yes, I have. The first paragraph refers to the delayed dilution cigarette.

Q The next document is to R. N. Thomson, dated 12/7/676, says "Brand development project 4008 - 1967 Plans and Objectives"; is that correct?

A That's correct.

Q This is written in your hand?

A Yes, it is.

Q Its Bates numbered 002617 --

A Yes.

Q -- to 26218; correct?

A Yes.

Q Would you read this document for us.

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A "(A) The major objective of the brand development project is to develop two new marketable brands for the company.

"(1) A new and different menthol cigarette with demonstrated marketable assets aimed at a definite" market -- "menthol market segment.

"(2) A controlled profile cigarette that has a much lower TPM delivery than a normal Marlboro type cigarette but can compete with this type cigarette in preference and win over low delivery cigarettes in the marketplace. I anticipate this cigarette not to have the lowest delivery in the marketplace but be near the low end of this scale.

"(B) A secondary objective is to continue generating new knowledge concerning cigarette brands and handle miscellaneous requests for investigation (includes test market Saratoga).

"Existing requests are for low delivery cigarette to compete with existing air diluted marketplace cigarettes and also a 'quick smoke' type of cigarette (5 puff - 10 milligram TPM) - 2 additional brands could result" must be something "this investigation," maybe "from this investigation." I can't read that. It's sort of scratched off here. That's it.

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Q Do you see the second page --

A "(C)" --

Q -- 26218? I just have one question. I think I can read --

First of all, this is in your handwriting?

A Yes, it is.

Q Would you just read the last two lines on this page.

A "Facilities are a means of generating new knowledge noted as a secondary objective above."

Q The next document is 26219 to 26222, and it's dated 12/7/66. It says, "Plans to obtain objectives." Do you see that, sir?

A Yes, I do.

Q Is this a document that is actually a continuation of the one we just looked at? In other words, should 2617 and 2618 -- Is 2619 the third page of that document?

A It looks like I marked it as 3. It would be -- logically follow. I would say, yes, it should be appended to this or part of this.

Q The reason I'm having trouble is that 26220 looks like it's page 2. Then there is another page 3 at 26221.

A It looks like they are misnumbered, would

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be my guess.

Q Then there is another page marked 26222 with another number. In other words, if we look at the document I just handed you, you start off with A. That is, 26219 starts off with A; correct?

A Yes.

Q Then document -- 26220, the lettered paragraph, is B; correct?

A Yes.

Q Then the first lettered paragraph on 26221 is lettered paragraph C, and it goes through lettered paragraph F; correct?

A Yes.

Q Then 26222 begins with lettered paragraph G and goes through J; correct?

A Yes.

Q 26222 is signed R. A. Tamol?

A Correct.

Q So I would like you to take a look at this. What I would like to try and understand --

A I would say they are in a correct order. This pack of four pages would be very close to this previous pack of two, all on the whole area of plans and objectives. These first two pages are plans to obtain objectives, I guess. I would say you have got

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them in proper order.

MR. RUSS HERMAN: So for purposes of identification in this deposition, we're going to mark this as RAT Exhibit 16H. The first page will be 26217, the next page 26218. Then page 26219, page 26220, page 26221, and then page 26222.

Q Now, these are various plans and objectives for 1967; is that correct?

A That's correct.

Q That's what RAT-16H is directed to. Would you look at paragraph A on 26219 titled "A new menthol cigarette brand." You authored this page?

A Yes, I did.

Q Would you read it, please.

A "A new menthol cigarette brand. (1) Rely on menthol background and firm so-called 'equilibrated' section of menthol filler - filter level spectrum," I guess.

"(2) Add modified anithol at low threshold level.

"(3) Run descriptive expert and paired comparison panels. Chose a candidate (different response with analytical tie-in) for new menthol mailout panel.

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"(4) Attach marketable aspect to the cigarette - white flavor carrier green tow and suggest possible market segment, i.e., cooling only, female - if two concepts" are -- "if two concepts or" something "of concept requires further investigation suggest two test markets for further definition.

"I feel we must demonstrate detectable differences (not necessarily a statistical winner with all menthol smokers) and define a market segment. Of course 'heaven' here would be a statistical across the board winner at all blind test levels."

Q Now we're on page 26220; right?

A Right.

Q Would you continue reading.

A "Hopefully, a demonstrated tie-in of flavor response to analytical data of the two flavors might spark dynamic action from a flavor group still to be defined.

"(B) Controlled profile cigarette -- firm demonstration of water degradable film in the filter required along with storage life.

"Continue investigations in (1) Compounding (success key is thought to be in this area.)

"(2) Application - perforated paper," can't make out the next thing. I'm not sure what that

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says. I can't make it out. There's a line through it.

"(3) Exact mechanism feasibility, temperature, moisture, microscopy.

"(4) Configuration - best to send moisture to the walls.

"If successful, (A) Storage, (B) Subjective evaluation, (C) Cigarette component" manufacturer, "machinery," rather, "concurrently for a product" off to the right.

Q Now would you read page 26221 of Exhibit RAT-16H?

A "If not successful (or successful) investigate alternatives.

"(C) Saratoga cigarette. Support test market investigations.

"(D) Puff volume results. Fit data to various smoking theories" -- or "smoking theories. Try to find minimum per puff TPM (or other) requirements to arrive at lowest TPM level for controlled profile cigarette.

"(E) Low delivery cigarettes. Continue all aspects of lower delivery including tobacco additives and treatment (A. B." something) "when results are generated.

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"Investigate quick smoke" something "by TPM delivery manipulations - paper, filter (5 puffs - 10 milligrams.)

"(F) King filter. Follow new concept testing by SEF. (I downgrade the possibility of success for this," I can't make that out, "in the tar derby market of the future" -- "of this cigarette in the tar derby market of the future."

Q Let's look at E, paragraph E, at page 26221 of RAT-16H, Exhibit RAT-16H. "Investigate quick smoke" what?

A I told you I can't make that out. It's not clear. Something "by TPM delivery manipulations - paper, filter (5 puffs)." That might be "smoke concept," "quick smoke concept." It looks like "concept."

Q TPM is total particulate matter?

A That's right.

Q We could read that "by total particulate matter delivery manipulations"?

A Correct.

MR. RUSS HERMAN: We're going to ask the FBI and ask you to produce the original of Exhibit RAT16-H, RAT Exhibit 16H, for the reason that some of these words we're having some

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trouble with, particularly under E.

MR. DELACROIX: We would object to the statement, counsel, and move to strike.

Q Would you look at 2622.

A "(G) Investigate tobacco portion of cigarette. (1) With respective to ability of existing subjective facilities to detect changes.

"(2) Analytical techniques.

"(3) Existing (tagged) flavor transfer (if not programmed by a flavor group).

"(H) Side stream aroma.

"(I) Flavor in filter. And they are starred by a bar, "If no other group investigates.

"(J) Service miscellaneous requests from marketing. (Plans as required.)"

Q See if you can find 2727 to Mr. R. A. Tamol.

A I have got it.

Q This relates to project 4008; is that correct?

A Yes, it does.

Q What was Mr. Davis' position with the Project Review Committee, do you recall?

A No, I don't.

Q Would you look at 26208, a letter by

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Ms. Heatwole on Philip Morris' stationery dated April 9, 1967, to you.

A Yes.

MR. GAY: August 9.

MR. RUSS HERMAN: What did I say?

MR. GAY: April.

Q I'm sorry. From Ms. Heatwole. She was the patent liaison officer at Philip Morris' office?

A Yes, she was.

Q This is dated August 9, 1967?

A Yes, it is.

Q To you from Ms. Heatwole; is that correct?

A That's correct.

Q It says, "Company idea #890"?

A Correct.

Q And makes reference to a Company Ideas Book?

A No. It says -- You're talking about, it says, "Your notebook pages are returned herewith"?

Q No, "The subject idea, which you submitted to us recently for review, has been entered in the Company Ideas Book."

A Yes, I see that. I assume -- I'm not familiar with that book. I assume it's some book she had where she placed company ideas within the book to

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be evaluated.

Q That's different than the project number index; correct?

A I would think so. I think it's just her own separate book.

MR. DELACROIX: If you know, Mr. Tamol. You don't have to guess. Only if you know.

A I don't know.

Q Now, when it says, "Your notebook pages are returned herewith," is that a reference to the type of handwritten notes that you have been identifying throughout the deposition?

A No, it isn't.

Q What type of notebook are we talking about here?

A The notebook is a development notebook. It's a bound notebook, either a development and research notebook. It has -- Initially I think you put carbon paper between it.

So you went and you had made at least one copy of what you wrote about as you were investigating it. For patent purposes, you would want to put your ideas in the development notebook.

Q Do you have a copy, and the R&D has a copy?

A One copy -- you would be able to tear it

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out. Some color, let's say it was yellow or something. The white page would stay in your development notebook. Sometimes you tore out the second page and sent it, for instance. This is probably what I did here, sent it along to Thelma with the idea.

Q Take a look at the next document, 24595, from Manzelli to Ronald A. Tamol dated April 15, 1968?

A I don't have that. What was that page again?

Q 24595.

A Is it typewritten?

Q Yes.

A No, we don't have it.

Q We'll go on to something else. Do you have document dated 5/4/66 that looks like this?

A Yes.

Q It's got 26464?

A Yes.

Q It says "Philip Morris Research Center"?

A Correct.

Q At the top, "Company Idea #1053"?

A Yes.

Q "Project number 4008"?

A Yes.

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Q "Book 2062"?
A Yes.
Q Thelma C. Heatwole, June 20, 19 --
A Looks like '68.
Q 1968 stamp; correct?
A Correct.
Q At the bottom it has your signature dated 5/4/66?
A Right.
Q On the left whose signature is that?
A J. S. Osmalov.
Q Who was he?
A He was one of the people that worked in the area, in our area, I believe in filters.
Q Would you read this to us, just the first two lines.
A "I would like to record my idea of improvement in the delayed dilution cigarette filter."
Q Is this the -- Is this what would be described as your notebook paper?
A This would be a page from the development notebook.
Q It would list each project, and the book each project was in? Is that what this is?
A No, this is the book number. I was

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assigned book 2062. As you went through multiple books, they signed out another book to you.

Q When you finished book 2062, you would get another numbered book?

A That's right.

Q You would keep your notes in that, and there would be carbons?

A Yes, that's correct.

Q You would send to Ms. Heatwole, if it was a new idea that you wanted recorded, you would send it to her?

A That's correct.

Q She would give it a number and send it back to you?

A Apparently that's what she did here.

Q Do you see document 24559? I have three documents -- more documents signed by or authored by Ms. Heatwole, 24559, 24558, and 24560.

MR. ALLEN: It appears that we don't have them.

MR. RUSS HERMAN: Let me identify them for the record. Never mind. Let's not. If you don't have them, let's go on to something else.

Q Do you have something that says "Process Development Reports," 27078?

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A Yes, we do.
Q On the second page it is dated 10/16/72. Do you see that?
A Yes.
Q What is this document? Is this a Philip Morris document?
A It looks like it's a Philip Morris document. I'm not familiar with it.
Q You're not familiar with it?
A No. I don't remember it, let me put it that way. The names of the people are Philip Morris people.
Q The next document is 24597 from Mr. Wakeham to the staff. It says, "Organizational change."
MR. ALLEN: What is the number again?
MR. RUSS HERMAN: 597.
Q Let's go to some other documents. We have a document titled "Philip Morris U.S.A., Inter-office Correspondence," February 8, 1989?
MR. ALLEN: Bates number 2475?
Q That's it, 2475 to 24788. Is this a Philip Morris document, sir?
A Yes, it is.
Q Authored to you by Mr. K. S. Burns?
A Yes.

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Q Who is Mr. Burns?

MR. RUSS HERMAN: I'm going to mark this document RAT-16I. That's Bates stamped documents 2475 through 2478A.

Q Are you the author of this document?

A Yes, I am.

Q It is dated February 8, 1989?

A That's right.

Q Signed by you on the last page?

A Yes.

Q It's copied to Mr. Knudson, K-n-u-d-s-o-n?

A That's right.

Q Who was Mr. Knudson?

A He was, I believe, a manager at the time.

Q Of research and development?

A In the development division.

Q Mr. Merritt or Ms. Merritt?

A Knudson must have been a director. Merritt was --

Q A director of what?

A In development, director of development, some kind of development activities.

Q What about H. B. Merritt?

A Merritt was a staff position, a staff position at the time.

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Q When you use the term "staff position," what do you mean?

A Well, they don't have line responsibility. They don't have people reporting to them, such as a manager, director, project leader.

Q As in a military staff position?

A Yes.

Q Would you look at -- Who is S. N. Ganeriwala, G-a-n-e-r-i-w-a-l-a?

A He's a Philip Morris employee in the research division.

Q Who is Mr. K. S. Burns?

A He was my manager. I reported to him at the time.

Q In what division?

A In the development division again. There were several names. He, in turn, reported to Knudson. That was the chain.

Q It was within research and development?

A In the development part of research and development.

Q On the last page of RAH-16I are your recommendations; is that correct?

A Yes.

Q They relate variously to natural leaf,

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reconstituted tobacco, shredded filler, and a cigarette machine; correct?

A That's correct.

Q The next document is stamped R. A. Tamol, January 19, 1973, in the upper right-hand corner, Bates stamp 26201?

MR. ALLEN: January 19?

Q January 19, 1973. Then there is a document Bates stamped 26202. Do you see that?

A Yes.

Q Then there is one Bates stamped 26203?

A Yes.

Q Those three pages go together?

A Yes, they do.

MR. RUSS HERMAN: I'm going to put an exhibit stamp of RAT-16J on the January 19, 1973 handwritten notations from Mr. R. A. Tamol to Mr. F. E. Resnik, R-e-s-n-i-k, Bates stamped 2601, 2602, 2603.

Q Is your signature on 2603, please?

A Yes.

MR. CLINARD: Mr. Herman, for the record, when you described your exhibit, you left out a digit. It's 26201 and 26203.

MR. RUSS HERMAN: Thank you very much,

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Counsel.

Q We'll do it over again. RAT Exhibit 16J consists of a three-page document Bates stamped 26201, 26202 and 26203; correct?

A Correct.

Q It's dated January 19,1973; correct?

A Correct.

Q It's from you to Mr. Resnik; correct?

A Yes, that's correct.

Q It's signed by yourself?

A Yes, it is.

Q What is the title of these handwritten notes?

A "Proposal to Sell ES Technology."

Q What does ES stand for?

A Expanded stem.

Q I'm going to show you 26206 and 26207 stamped January 23, 1973, Confidential, R. A. Tamol to F. E. Resnik. Do you have those documents, sir?

A Yes, I do.

MR. RUSS HERMAN: We'll mark that RAT-16K.

Q These two pages go together, sir?

A They appear to go together, yes.

Q It's in your handwriting, sir?

A Yes, it is.

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Q Who is Mr. Resnik? What was his job?

A He had several positions at R&D and in New York. At this point he might have been assistant to the vice-president. I think he was in charge of R&D at the time. Basically, he ran R&D.

Q What is the title of this proposal?

A "Additional Comments and Proposals to Sell ES Technology."

Q Again, that is expanded stem?

A That's correct.

Q Would you read this document, please.

A "The real point of issue that Mr. Goldsmith raises is whether or not Motch and Merryweather Machinery Company (Jetstream) has the capability, i.e., financial, manufacturing and experience in international negotiations to handle turnkey operations. Tobacco companies could be contacted by them just as easily as Hauni except from a probable person to person basis.

"As an aside, Hauni would require extensive aid on our part (mine or someone else) to get the unit off the ground in final engineering, et cetera, since they have other tobacco commitments."

Let me continue, next page?

Q Yes, sir.

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A "Whereas for Jetstream, they could put forth 100 percent effort to break into the tobacco industry (faster delivery to our international companies.)

"Therefore, I think it would be appropriate and would violate no level of confidentiality if you and I would talk with Motch and Merryweather to determine if they had the 'clout' and desire to sell the 'hypothetical' system with Jetstream as its core. If not, they no longer are a legitimate option and would fall out of the picture."

Q What is or who is Hauni?

A Hauni is a German cigarette machine manufacturer.

Q Would you spell it.

A H-a-u-n-i.

Q Thank you.

Do you have a document stamped with your stamp dated August 30, 1978, 26473?

A Yes, I do.

Q Is this your handwriting?

A Yes, it is.

Q What are these notes about?

MR. GAY: Objection to form of the question.

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Q Is it about a Philip Morris project or some personal --

A No. It appears to have a commendation of comments about maintenance and comments about ferrofluids.

Q About what?

A Ferrofluids. That Philip Morris is not involved in.

Q The ferrofluids had to do with your own personal outside invention; is that correct?

A No. The more I read it, this is not a ferrofluid document having to do with -- I don't know, some sort of idea I was kicking around, a number of ideas.

Q Do you see on the top at the left it said Fred, Tom?

A Yes.

Q Who is that?

A They were in the maintenance -- Fred was maintenance foreman, and Tom was on assignment working in the area.

Q For Philip Morris?

A For Philip Morris in my area as plant engineer.

Q Then I see there are some notes: Dryer,

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antenna, medical, golf, putter, car vent. Were those personal notes?

A Those are personal notes.

Q The next page, 26472, is stamped the next day, August 31, 1978. Is this your handwriting?

A Yes, it is.

Q It looks like you were trying to invent a putter, a golf putter, is that what it is about?

A That's right.

Q You were puttering about?

A It turns out you cannot manipulate the head of a putter. It's against the rules.

Q What about the tobacco nicotine content, can you manipulate that?

MR. DELACROIX: Objection.

MR. GAY: Objection.

Q Do you have Exhibit 26231 --

MR. DELACROIX: Move to strike that.

Q -- dated February 13, 1980?

MR. DELACROIX: Move to strike that last question, Mr. Herman.

Q Do you have Exhibit 26231, a letter dated February 13, 1980, and it goes through exhibit number 26234, signed "Sincerely, Ron" in your handwriting?

A Yes.

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Q Does this have to do with your water treatment for your personal business rather than Philip Morris business?

A Yes, it does.

Q Then there are a number of handwritten notes 22751, 752, 753, 754, 755.

A 751 --

Q They start on 22751. I believe, actually --

MR. RUSS HERMAN: Let's go off the record for one second.

THE VIDEOGRAPHER: We're off the record at approximately 4:20.

(Off the record.)

THE VIDEOGRAPHER: We're back on the record at approximately 4:23.

MR. GAY: 22736 through 227 what?

MR. ALLEN: 68.

MR. CLINARD: What is your stopping point?

MR. RUSS HERMAN: Let's go off the record again.

THE VIDEOGRAPHER: We're back off the record again at 4:24.

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(Off the record.)

THE VIDEOGRAPHER: We're back on the record at approximately 4:25.

Q Let me show you a document, 4009 through 4024. It's typewritten. It's stated Philip Morris Inter-office Correspondence, December 19, 1990, from R. A. Tamol to H. G. Burnley, Jr., Review of work assignments and activities - July 1989 to July 1990. Are you familiar with this document?

A Yes, I am.

MR. RUSS HERMAN: For purposes of the deposition, I'm going to mark this document as RAT-16L. I'm going to mark document 4009 through 4024 as RAT16-L.

Q Sir, who is Mr. Burnley?

A He was the director of development at that point in time.

Q You say development. Is that research and development?

A Yes, it is.

Q Signature appears at page 4022; is that correct?

A Yes.

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Q Does this document fairly represent the work activities which you accomplished for Philip Morris from July 1989 to July 1990?

MR. ALLEN: Object to the form of the question. It exceeds the scope of what is permissible under the judge's order.

You can answer.

A Yes, it is.

Q The last document in this series -- Strike that.

The next document in this series is RAT Exhibit 16M, 22717 through 22726. I will ask you if these are documents which you either authored or assembled in connection with your work at Philip Morris. Have you reviewed it, sir?

A Yes, I have.

Q Do these documents or -- Should they be grouped together, or should the patent information be separated?

A I would say the first pages, 717 to and including the patent to 726, should be grouped together, but 727 is not relevant to that.

Q Well, I'm sorry 727 is attached. I'm only asking about RAT-16M, which is 22717 through 22726.

A Yes.

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Q They relate to CO2 for tobacco; is that correct?

A Yes.

Q The writing on these within this exhibit is your writing?

A Yes, it is.

Q Was this something you were working on at Philip Morris in 1989?

A It appears I was, yes.

Q What project was this related to?

A This was when I was in the design engineering group, so I don't know what the project was.

In the design engineering, we weren't working within a project system. We were assisting projects. So we had jobs.

Q The next document is 4867. It says, "Directions to PM Research Center, R. A. Tamol, June 27, 1991."

A Yes, that's my writing.

Q Is that yours?

A Yes.

Q Now, the next document I want to ask you about is 10742, "Change To Gear R&D to Other Company functions."

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MR. ALLEN: 10742? Got it.

Q Is this a document which you recommended or was sent to you by someone else at Philip Morris?

MR. ALLEN: Can you identify it?

A I don't recall this document at all. It has no date on it.

Q The next document I want you to look at is 22733. We'll mark that as RAT-16N. What is the word at the top of the page, sir?

MR. DELACROIX: Excuse me, Counsel. Give us a moment. What is that number again?

MR. ALLEN: 22733.

MR. RUSS HERMAN: And 22734.

MR. ALLEN: That is going to be RAT-16N?

MR. RUSS HERMAN: Yes.

Q Do you see the word at the top of the page?

A Yes. It's "surfactants."

Q Would you spell that, please.

A S-u-r-f-a-c-t-a-n-t-s.

Q This is in your handwriting?

A Yes, it is.

Q And it relates to your work at Philip Morris?

A No, it does not.

Q What does it relate to?

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A It relates to ferrofluids.
Q Which was your toy invention?
A That's right.
Q 26474.
MR. ALLEN: Before we get to the next one, Mr. Herman, would you agree that -- to designate this exhibit together with any others that we come across?
I know that lengthy group of them beginning with 22735, for example, I believe you will find all of these have to do with ferrofluids. I would like to designate those as being included with the documents protected by the confidentiality order that we discussed on the first day of the deposition.
MR. RUSS HERMAN: Sure.
MR. ALLEN: I appreciate it.
Q 26274?
A Got it.
Q It says novel, N-o-v-e-l, at the top. Is this your handwriting?
A Yes, it is.
Q Does this have to do with writing a novel?
A Yes, it does.
Q You didn't give these notes to Mr. Grisham

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for his latest book, did you?

A No, I didn't.

Q These are personal notes, have nothing to do with Philip Morris?

MR. RUSS HERMAN: You can strike my last comment, the question and the answer.

MR. CLINARD: Are you removing that from 16?

MR. RUSS HERMAN: Yes. I'm removing 26474 from Exhibit 16.

MR. CLINARD: But you did not remove the confidential ferrofluids?

MR. RUSS HERMAN: No, I didn't. We'll take care of that at some point.

I am going to identify for the record Exhibit RAT-16. Since it's undergone some changes since we started and since we have taken out some material that really didn't belong in this exhibit, I'm going to reidentify for the record as I attach --

Let's go off the record.

THE VIDEOGRAPHER: Going off the record at approximately 4:35.

(Off the record.)

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THE VIDEOGRAPHER: We're back on the record at approximately 4:36.

MR. RUSS HERMAN: First page is an undated memo from Deszyck, D-e-s-z-y-c-k, to those listed dated April 6, 1965.

The next exhibit is Exhibit 16 --

MR. GAY: You said it was undated?

MR. RUSS HERMAN: Let me try it again. RAT-16 begins with an un-Bates stamp dated memo April 6, 1965, from Deszyck to "Those listed."

The next document is RAT Exhibit 16A beginning with page 26083 and ending with page 26108.

The next is RAT-16B beginning with 24315 and then 26500 through 26527.

The next is RAT-16C, 2880 to 2884.

The next is Exhibit 26227 with a number of pages attached: 26481, 26482, 26483, 26484, 26485, 26486 and 26487.

MR. GAY: What is the number of that?

MR. RUSS HERMAN: It's part of RAT-16.

The next is the brand development presentation of January 18, 1965, three pages -- Strike that.

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The next document in RAT-16 is dated January -- date stamped January 18, 1965, Bates stamped 2875, 2876, 2877.

The next document in RAT-16 is from Saleeby to Resnik dated 4/14/65 -- Strike that.

The next document in RAT-16 is a memorandum from Mr. Tamol to Mr. Resnik with a copy to Mr. Saleeby dated April 14, 1965, document 2736.

The next document is RAT Exhibit 16D, and it is pages 2731 to 2752.

MR. ALLEN: 37.

MR. GAY: I'm going to object to your designation --

MR. RUSS HERMAN: Strike that.

MR. GAY: Let me just object for the record your designation of 2736. I'm not sure you were accurate about it.

MR. RUSS HERMAN: Okay, you can object to it.

2736 is from Mr. Tamol to Mr. Resnik, copy to Mr. Saleeby, Pinnacle cigarette, BaP delivery dated 4/14/65.

RAT Exhibit 16D is a presentation of April 27 and 28, 1965, Bates stamped 2637 through 2752.

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The next document in RAT-16 is dated May 19, 1965. It lists Mr. R. Saleeby and Mr. W. L. Dunn, Jr. at the top. It's initialed WLD at the bottom.

MR. ALLEN: What is the Bates number?

MR. RUSS HERMAN: Bates number is 2856.

The next exhibit in 16 is RAT-16E consisting of Bates stamped numbers 2862, 2863, 2864, titled "Presentation Outline."

MR. CLINARD: Let me back up one. There were two documents attached to 2856. Have you removed them?

MR. RUSS HERMAN: They aren't contained in Exhibit 16.

MR. GAY: 2896 and 2953 are not contained in 16?

MR. CLINARD: Would you like me to read the numbers?

MR. RUSS HERMAN: Yes, if you don't mind.

MR. CLINARD: They were 2856, 2096 and 2953.

MR. ALLEN: 2736, is that correct?

MR. RUSS HERMAN: The next document is RAT-16F. Its Bates stamped 3383 and 3384.

The next document is Bates stamped RAT --

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I'm sorry, the next document is RAT-16G, Bates stamped 26,249 through 26,263, lists Mr. Seligman and Mr. Tamol at the top, marked confidential and dated August 9, 1966.

Next, a document is Bates stamped 26466. The next is 26468. The next is 26470. The next is 26469. The next is 2728.

The next is RAT16-H to Mr. R. N. Thomson, a memorandum dated December 7, 1966, Bates stamped 26217 through 26222.

The next is document 2727.

The next is 26,208.

The next is 26,464.

The next is document 27078 and 27079 dated 10/16/72.

The next is RAT-16I --

MR. DELACROIX: Hold up for a minute, counsel.

MR. RUSS HERMAN: RAT-16I, which is Bates stamped 2475 through 2478A from Mr. Tamol to Mr. Burns, dated February 8, 1989.

The next is RAT-16J, Bates stamped 26201 through 26203 from Mr. Tamol to Mr. Resnik, dated January 19, 1973.

The next is RAT-16K, 26,206 through 26,207

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from Mr. Tamol to Mr. Resnik dated January 23, 1973.

The next document I'm removing from the exhibit, the personal notes of Mr. Tamol, Bates stamped 26473 and 26472.

The next document is in RAT-15 is -- Exhibit 16 is 26231 through 26234.

The next document is RAT-16L, document stamped 4009 through 4024, a memo from Mr. Tamol to Mr. Burnley, Jr., dated December 19, 1990.

The next document in RAT-16 is RAT-16M relating to CO2 for tobacco.

MR. ALLEN: Stop. I have a previous exhibit, one that is designated 16L. You indicated the Bates numbers ran 4009 through 4024. I have a 4025.

MR. RUSS HERMAN: Yes. In questioning the witness, he did not indicate the handwritten notes belong to this document. Indeed, they are dated on a different date.

MR. ALLEN: Are you separating those documents?

MR. RUSS HERMAN: Yes.

MR. ALLEN: Are you removing this as part of the exhibit?

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MR. RUSS HERMAN: Yes.

MR. ALLEN: 4025 you removed?

MR. RUSS HERMAN: Yes.

MR. ALLEN: Thank you.

MR. RUSS HERMAN: I'll repeat. RAT-16L is document 4009 through 4024, dated December 19, 1990, Tamol to Burnley.

RAT-16M is 22717 through 22726.

The next document RAT-16 is 4867.

The next is document 10742.

And the last document in RAT Exhibit 16 is RAT Exhibit 16N, two pages, items 2273 -- Bates numbers 22733 and 22734.

Q Mr. Tamol, in connection with Exhibit RAT-16 identified by you during the course of questioning today, were these documents either prepared by you or others in connection with the work that you did at Philip Morris tobacco company while you were employed there, except for the document which relates to the outside invention that you were working on that involved -- we have designated as a talk?

A That's correct.

MR. ALLEN: For the record, to the extent he differentiated when questioned about a particular individual document, I would object

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to the question and rely on his answer given to the general question.

Q Were these documents brought by you, that is, RAT-16, brought by you from your home to Hatsy Heep's home?

A Apparently they were.

MR. RUSS HERMAN: Do you have that list for me? Let's go off the record.

THE VIDEOGRAPHER: Off the record at 4:50.

(Off the record.)

THE VIDEOGRAPHER: We are back on the record at approximately 4:59.

MR. RUSS HERMAN: In connection with the deposition of Mr. Tamol, we're going to identify RAT Exhibit 40A as box number 1 of documents PMI1881 to 4110.

MR. ALLEN: Can you repeat those numbers.

MR. RUSS HERMAN: 1881 to 4110.

Box 2, Exhibit Tamol RAT-40B is PMI Bates number 4111 to Bates number 6697.

Box RAT-40C is PMI6698 through 10,355.

Box 4 is RAT Exhibit 40D, PMI10,356 to 12,954.

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RAT Exhibit 40E, box 5, is PMI12,955 to 14,575.

Box 6 is RAT Exhibit 40E -- F, strike what I said. Box 6 is RAT Exhibit 40F, Bates number 14,576 to 17,056.

Box 7 is RAT-40G, Bates number 17,057 through 19,579.

Bates number RAT-40H, box 8, and it's PMI Bates number 19,580 through 22,727.

Box number 9 is RAT Exhibit 40I, and it's Bates stamped 22,728 through 24,488.

Boxes 1 through 9 as identified were documents delivered by Hatsy Heep to the plaintiff's legal committee of Castano in garbage bags and a packing box.

Exhibit box 10, RAT Exhibit 40-J, are Bates stamped 24535 through 25411 and 25888 through 27205.

MR. DELACROIX: Would you come back with those numbers one more time.

MR. RUSS HERMAN: 24535 through 25411 and 25888 through 27205. They come from documents delivered to the PLC in Castano by Ms. Heep originally in a garbage bag and a packing container.

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They are also documents that we have received since then from the sheriff in Richmond, production from Mr. Tamol, and additional documents we received from Mr. Rasmussen.

Other than videotape and photographs, these constitute all the writings which the PLC has received in connection with the Philip Morris/ Heep/Tamol issues.

MR. GAY: What did you do with the bags that she gave you this in?

MR. RUSS HERMAN: I don't have the bag. I took the documents from the garbage bag and put them in boxes.

MR. GAY: What happened to the bags?

MR. RUSS HERMAN: I don't know.

MR. DELACROIX: Also, Mr. Herman, there seems to be a break between, and there may be a reason for this, I'm asking, between Bates number 24488 and 24535. Are those documents --

MR. RUSS HERMAN: Those are Philip Morris documents produced by other sources that have nothing to do with Heep/Tamol/Philip Morris issues we're involved with.

MR. DELACROIX: You're just identifying

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these documents for the record at this time pending Mr. Tamol's identification?

MR. RUSS HERMAN: What we're going to do is deliver the documents -- exhibits -- in 10 boxes to the court reporter. They will be there for Mr. Tamol and his attorney to review between now and the time that we resume.

He can note any missing documents, if there are some. He can note documents he has never seen before or documents that he can't identify, which will speed up the questioning process when we come back.

Mr. Allen is going to work out with Mr. Tamol whatever code they want to use to indicate that, and we will provide to Mr. Allen by the end of this week a list in seriatim of all the Bates numbers, so that as Mr. Tamol goes through them, he can code them in whichever way Mr. Allen designates.

At the same time, we're delivering three sets of documents in boxes. In the event there are some materials that are not in those boxes, you let us know what they are, and we will provide them to you. I don't expect there to be many.

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But I wouldn't be surprised if there are a few, because in order to prepare for these depositions, some of the documents which I have presented to you already during the course of the depositions have come from the three sets. We tried to keep them consistently and put them back, but we may have missed a couple.

MR. ALLEN: Two questions before we -- Mr. Delacroix asked about the gap between 24488 and 24535. My question is: There also appears to be a gap, first of all, from 0 to 1881. I don't know why they start at 1881.

MR. RUSS HERMAN: All of your documents are coded PMI for Philip Morris Inc., whether they came from Tamol/Heep or anywhere else.

MR. ALLEN: Was there any reason they begin with --

MR. RUSS HERMAN: Yes, because we got a lot more documents before Ms. Heep turned documents over to us.

MR. ALLEN: There is also a gap between the two groups of numbers that you have identified with respect to box 10. The gap there would be --

MR. RUSS HERMAN: Those are documents that

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were not given to us from Ms. Heep or Mr. Tamol.

MR. ALLEN: You have other Philip Morris documents unrelated to Ms. Heep?

MR. RUSS HERMAN: Thousands of them.

MR. ALLEN: I understand that. But have those numbers, however --

MR. RUSS HERMAN: Yes.

MR. ALLEN: -- between 25411 and 24588?

MR. RUSS HERMAN: Yes. We received some production today that obviously isn't in these boxes. You have copies of them because we have handed them out during the deposition.

Any other questions?

MR. DELACROIX: Just for the record, Mr. Herman, before the completion of this deposition and at the next continuation of it, we will set forth any objections that we have to the exhibits that have been thus far submitted and attached to the deposition, as well as the other nine or ten boxes of exhibits which you're identifying at this time.

I'm not saying we will have specific objections, but we are reserving any rights that we may have at this time to make those objections at that time before the depositions

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conclude.

MR. RUSS HERMAN: I don't know whether you can do what you say you want to do under the rules. You know, the record is yours. You can state your objections whenever you want.

As to whether they are timely objections or correct objections, that is something else.

MR. BERTAUT: Russ, we would state that same objection. I don't know that I have any. To the extent these documents have objections for B & W, we'll state our objections later after review.

On that same note while we're on the record, can we ask as a courtesy next time, I know you have a lot documents, but to the extent you are offering any additional documents when we reconvene, if you could just include one more extra set for the four defendants down there.

MR. RUSS HERMAN: I'm not going to do that. I'm providing one and three, which is what I'm supposed to do.

MR. BERTAUT: I'm talking about the exhibits you're pulling out questioning the witness on.

MR. RUSS HERMAN: I'm saying to you, I'm

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not going to do that.

MR. BERTAUT: Why is that?

MR. RUSS HERMAN: It's on the record. I'm supposed to provide one and three. I offered to do it another way. It was a lot easier. There was a lot of objection to it.

MR. BERTAUT: That's fine. It just makes it absolutely impossible for any defendant, other than PM, who might have an objection to the introduction of exhibits, to make a contemporaneous objection.

With that understanding, that's fine. We can sit through depositions eight hours at a time where the plaintiffs refuse to produce copies of documents.

MR. RUSS HERMAN: No. We're following the magistrate's directive and the agreement that was reached by stipulation among all counsel. We will produce three, you get three.

If you want to sit behind other counsel and look at these documents instead of reading newspapers and doing whatever you're doing during this deposition, then you do it. Don't you get nasty with me at the end of a day when you have been sitting in depositions reading

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newspapers --

MR. BERTAUT: Excuse me, Mr. Herman, I haven't been doing that.

MR. RUSS HERMAN: All you have to do for two days is to make -- is to ask something. You don't wait until the end of two days and try and rush in with something --

MR. BERTAUT: For the record, Mr. Herman --

MR. RUSS HERMAN: Excuse me, I didn't interrupt you.

MR. BERTAUT: Yes, you did.

MR. RUSS HERMAN: Well, I'm going to finish. You're not going to wait for two days sitting at the end of a table while depositions are ongoing and we provided three sets of exhibits, and then at the end of two days saying, gee, somehow you have been prejudiced.

Nobody has stopped you from picking up a set of documents. There are three Philip Morris lawyers here. If you are representing Brown & Williamson and wanted to get up and go get a set of documents, you could have done it. You work it out with Philip Morris.

I'm not supposed to be -- This isn't a kindergarten, and I'm not the teacher. You work

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it out. That's all I have got to say about it.

MR. BERTAUT: So you're finished now?

MR. RUSS HERMAN: No, I'm not finished. It depends on what you say.

MR. BERTAUT: I just want to make sure I'm not interrupting you.

For the record, the first day of depositions the plaintiff produced a set of documents for the non-PM defendants in the room, and we looked at those records.

Today, three copies were produced. One went to the witness. One -- Two went to PM. There were no documents available for us to look at, unless we took them out of the hands of either PM or the witness or the PLC, which, as I recall, offered us on one occasion to look at the documents.

If you want simultaneous and contemporaneous objections, then you're going to have to produce an exhibit to me to look at.

The production of three copies of incredible numbers of documents where you're asking the witness to identify, not offering them to other counsel, is not a sufficient opportunity for us to look at those documents.

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I make my objection to you, sir, not PM. I don't have to get records from PM that you're introducing and offering at a deposition.

MR. RUSS HERMAN: Do you have anything else?

MR. BERTAUT: I'm quite through.

MR. RUSS HERMAN: Are you through?

MR. BERTAUT: Yes.

MR. RUSS HERMAN: Good. The deposition is adjourned until we resume.

(RAT Exhibits 4A, 9A, 14, 14A, 15, 16, 16A through 16N, 17, 19, 20A, 21, and 40A through 40J marked.)

THE VIDEOGRAPHER: The deposition is adjourned at approximately 5:17.

(Deposition concluded at 5:17 p.m. to be resumed at a later date.)

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